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COMMITTEE ON THE RIGHTS OF THE CHILD

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 44 OF THE CONVENTION

Initial reports of States parties due in 1999

SWITZERLAND

[19 January 2001]

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CONTENTS

	Paragraphs	Page
Introduction	1 - 5	6
General statistical information on children	6 - 9	6
I. GENERAL MEASURES OF IMPLEMENTATION	10 - 44	7
A. Compatibility of the Swiss legal order with the obligations deriving from the Convention	10 - 13	7
B. Measures adopted in the context of article 4 of the Convention	14	8
C. Place of the Convention vis-à-vis internal law	15 - 16	9
D. Existing mechanisms to ensure the implementation of the Convention, coordinate policies applicable to children and monitor progress achieved (art. 41)	17 - 21	9
E. Measures taken to make the principles and provisions of the Convention widely known (art. 42)	22 - 23	11
F. Dissemination of reports (art. 44 (6))	24 - 29	14
G. International cooperation	30 - 44	16
II. DEFINITION OF THE CHILD	45 - 59	18
A. The definition of the child in Swiss law	45	18
B. The age limit for children to exercise their rights and fulfil their obligations	46 - 59	18
III. GENERAL PRINCIPLES	60 - 132	21
A. Non-discrimination (art. 2)	60 - 70	21
B. Best interests of the child (art. 3)	71 - 82	25
C. The right to life, survival and development (art. 6)	83 - 101	27
D. Respect for the views of the child (art. 12)	102 - 132	31

CONTENTS (continued)

		Paragraphs	Page
IV.	CIVIL RIGHTS AND FREEDOMS	133 - 215	36
	A. Name and nationality (art. 7)	133 - 140	36
	B. Preservation of identity (art. 8)	141 - 144	37
	C. Freedom of expression (art. 13)	145 - 155	38
	D. Access to appropriate information (art. 17)	156 - 176	40
	E. Freedom of thought, conscience and religion (art. 14)	177 - 190	43
	F. Freedom of association and of peaceful assembly (art. 15)	191 - 197	47
	G. Protection of privacy (art. 16)	198 - 211	48
	H. The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment (art. 37 (a))	212 - 215	50
V.	FAMILY ENVIRONMENT AND ALTERNATIVE CARE	216 - 387	50
	A. Parental guidance (art. 5)	216 - 224	50
	B. Parental responsibilities (art. 18 (1) and (2))	225 - 262	52
	C. Separation from parents (art. 9)	263 - 273	58
	D. Family reunification (art. 10)	274 - 304	61
	E. Illicit transfer and non-return (art. 11)	305 - 313	68
	F. Recovery of maintenance for the child (art. 27 (4))	314 - 319	70
	G. Children deprived of a family environment (art. 20)	320 - 326	71
	H. Adoption (art. 21)	327 - 360	72

CONTENTS (continued)

		Paragraphs	Page
I.	Periodic review of placement (art. 25)	361 - 363	78
J.	Neglect, exploitation or abuse (art. 19), physical and psychological recovery and social reintegration (art. 39)	364 - 387	79
VI.	BASIC HEALTH AND WELFARE	388 - 498	86
A.	Disabled children (art. 23)	388 - 403	86
B.	Health and health services (art. 24)	404 - 458	90
C.	Social security and childcare services and facilities (arts. 26 and 18 (3))	459 - 491	101
D.	Standard of living (art. 27 (1) to (3))	492 - 498	106
VII.	EDUCATION AND LEISURE, RECREATION AND CULTURAL ACTIVITIES	499 - 611	109
A.	Education, including vocational training and guidance (art. 28)	499 - 586	109
B.	Aims of education (art. 29)	587 - 591	124
C.	Leisure, recreation and cultural activities (art. 31)	592 - 611	125
VIII.	SPECIAL PROTECTION MEASURES	612 - 799	129
A.	Children in situations of emergency (arts. 22, 38 and 39)	612 - 642	129
B.	Children in conflict with the law (arts. 40, 37 and 39)	643 - 684	139
C.	Children in situations of exploitation, including physical and psychological recovery and social reintegration (arts. 32 to 36)	685 - 773	146
D.	Children belonging to a minority (art. 30)	774 - 799	162
IX.	CONCLUSION	800 - 803	166

CONTENTS (continued)

Page

List of annexes

A. Elements of a Swiss policy on children and young people, Federal Department of Home Affairs, Bern, 3 July 2000 196

B. Legal texts 196

C. Statistics 197

D. List of principal abbreviations 198

Introduction

1. The Swiss Government has the honour to submit to the Committee on the Rights of the Child (hereafter "the Committee") the initial report of Switzerland, prepared in conformity with article 44, paragraph 1 (a), of the 1989 Convention on the Rights of the Child[1] (hereafter "the Convention"). This report should be read in conjunction with the core document constituting the first part of Switzerland's various reports (HRI/CORE/1/Add.29/Rev.1), and also with its accompanying annexes. Generally speaking, it takes account of the status of legislation as at 1 November 2000.

2. As regards the annexes, the Swiss Government draws particular attention to the supplement to Switzerland's first initial report "Elements of a Swiss policy on children and young people". The preparation of the report has also provided an opportunity to consider the situation of children and young people in Switzerland, to describe the achievements of the policy concerning them and to identify remaining gaps, against the background formed by the Convention. This basic information will also provide Switzerland with working tools for reinforcing future policy on children and young people.

3. The present report describes the legislative, administrative, judicial and other measures in force in Switzerland as they relate to the rights guaranteed by the Convention. It attempts to present, beyond a mere description of the legal regime and legislation, the actual situation with regard to protection of the rights of the child. As to its content, form and presentation, the detailed account relating to the provisions of the Convention follows the Committee's guidelines on the preparation of country reports concerning the Convention (documents CRC/C/5 of 30 November 1991 and CRC/C/58 of 20 November 1996). Because of the federal structure of the State, which reserves broad spheres of competence for the sovereignty of the 26 cantons making up the Swiss Confederation, some information in this report is condensed in the form of general rules valid for the whole of Switzerland. When this has appeared necessary, references to relevant cantonal information have nevertheless been incorporated.

4. The Swiss Government hopes that this initial report will meet the Committee's expectations and that its consideration will provide an opportunity for a fruitful dialogue.

5. This report was adopted by the Swiss Government on 1 November 2000. It will be published in German, French and Italian so as to be accessible to a wide readership. A summary of the report has also been prepared with a view to ensuring the broadest possible dissemination of the principles contained in the Convention and their implementation in Switzerland.

General statistical information on children

6. Further to the core document, it should be stated at this point that, according to the data derived from the most recent federal census,[2] the resident population of Switzerland in 1990 was 6,873,687. That figure included 1,399,011 children and young people under the age of 18, representing about 20 per cent of the total population. The proportion of children and young people under 18 within the resident population in 1980 was 24 per cent and in 1970 28 per cent.

7. In 1990, of the 1,399,011 children and young people living in Switzerland, 1,132,942 were of Swiss nationality. Most of the foreign children were Italian (78,157), Yugoslav (46,738), Spanish (27,266), Turkish (27,079) or Portuguese (26,386).[3]

8. In 1990, 717,395 boys (51.3 per cent) and 681,616 girls (48.7 per cent) were living in Switzerland. In 1997, there were 105.1 live-born boys for every 100 girls. In the same year, 59,117 Swiss children were born in Switzerland as compared with 21,467 children of foreign nationality.

9. In 1990, 63.6 per cent of children were living in urban areas and 36.4 per cent in rural areas. As regards the distribution of national languages in 1990, 64.1 per cent of children spoke German, 20.5 per cent French, 6.3 per cent Italian and 0.5 per cent Romansch. In the same year, 47.2 per cent of children were of the Roman Catholic faith and 37.9 per cent Protestants.[4]

I. GENERAL MEASURES OF IMPLEMENTATION

A. Compatibility of the Swiss legal order with the obligations deriving from the Convention

10. Switzerland's commitment to the rights of the individual,[5] democracy and the principles of the rule of law constitutes one of the five objectives of its foreign policy.[6] For this reason, Switzerland does everything possible to ensure better protection in law and in practice for children, who are among the most vulnerable members of society.

11. At the internal level, the Federal Constitution and numerous other enactments guarantee the rights of the child in the various spheres of life. At the international level, the rights of the child are set forth in various instruments to which Switzerland is a party, such as, for example - at the regional level - the European Convention on Human Rights and - at the universal level - the United Nations instruments relating to human rights, in particular, the Convention on the Rights of the Child. On 28 June 2000, it also ratified ILO's Worst Forms of Child Labour Convention (No. 182).

12. The Swiss legal system thus ensures broad protection for children and young people - protection which falls within the context of the Convention. However, when Switzerland acceded to the Convention, certain areas where federal or cantonal law was not compatible were identified. This led to the formulation of reservations with regard to five provisions (arts. 5, 7, 10 (1), 37 (c) and 40).

13. On various occasions, the Swiss Government has expressed its desire to create, through the necessary legislative amendments, the conditions conducive to the prompt withdrawal of the reservations.[7] Quite recently, it has had occasion to confirm its position in this respect.[8] It has already taken important steps to consider and prepare the amendments to the law in force necessary for such withdrawal, and Parliament will reach a decision on this work. The developments relating to the work are described below, in the context of the observations on the corresponding provisions of the Convention (see paras. 218 et seq., 141, 303 et seq. and 676 et seq.).[9]

B. Measures adopted in the context of article 4 of the Convention

14. Generally speaking, Switzerland's action is aimed at the more effective implementation of international standards at the national level. Thus, although the Swiss legal system admittedly appears to be broadly consistent with the Convention, the fact remains that Switzerland, basing itself directly or indirectly on the Convention, has made a point of effecting important legislative amendments and establishing various initiatives aimed at reinforcing existing protection. Reference may be made, in particular, to:

The new Federal Constitution, which entered into force on 1 January 2000, now contains:

(a) In the part on fundamental rights, an express provision on the protection of children and young people (art. 11);

(b) Two references to children and young people in the provisions defining social goals (art. 41 (1) (f) and (g));

(c) A provision relating to the sharing of competence between the Confederation and the cantons which devotes particular attention to the needs of children and young people (art. 67);

(d) Lastly, a provision concerning the legal situation of children: prohibition of discrimination on grounds of age (art. 8 (2)).

On 21 September 1998, a federal bill governing the criminal status of minors was submitted to Parliament. Following adoption of this text, the criminal law on minors will be regulated by a specific enactment, and no longer by a single code, in parallel with the criminal law on adults.[10] This new law should enable Switzerland to withdraw its reservations to articles 37 (c) and 40 (2) (b) (ii) of the Convention.[11]

A partial revision of the criminal provisions concerning sexual offences is currently under preparation. The aim is to extend the limitation period for sexual offences committed against children and to make mere possession of child pornography a punishable offence.

The law on assistance to victims of offences is currently undergoing partial revision with a view to improving the position, in criminal procedure, of juvenile victims of sexual offences and providing support for them throughout the proceedings in order to mitigate the harmful effects of those proceedings on their psychological equilibrium.

The total revision of the Asylum Act and Ordinance 1 on asylum, both of which entered into force on 1 October 1999, improve the position of minors in asylum procedure.

The new law on divorce and the revised law on filiation, which entered into force on 1 January 2000, comprise (a) substantial material innovations which are clearly in the interests of the child, and (b) improvements relating to the position of the child in proceedings involving family law.

The Federal Department of Home Affairs (DFI) has undertaken a thorough analysis of national policy on children and young people. An outline of this analysis and emerging prospects is annexed.

In cooperation with the Swiss Committee for UNICEF, the DFI has begun a far-reaching study on mediation for children.[12]

C. Place of the Convention vis-à-vis internal law

15. Switzerland is one of the States with a monistic tradition. Every international treaty, including the Convention, ratified by the Swiss Government therefore forms an integral part of its internal legal order as from the treaty's entry into force for Switzerland, without need to transpose the treaty into the legal system through the enactment of a specific law. The Convention entered in force in Switzerland on 26 March 1997.

16. As from the date of an international treaty's entry into force for Switzerland, it is possible to assert its ensuing rights before the Swiss authorities, to the extent that the provisions invoked are directly applicable. A provision is directly applicable when this rule, considered in its context and in the light of both the subject and the purpose of the treaty, is unconditional and sufficiently precise to produce a direct effect, to apply as such to a particular case and to constitute the basis for a concrete decision.[13]

D. Existing mechanisms to ensure the implementation of the Convention, coordinate policies applicable to children and monitor progress achieved (art. 41)

17. There are many mechanisms involved in the implementation of the Convention at both the federal and cantonal levels. These two levels of competence derive from the federal structure of Switzerland. In fact, the sharing of powers between the central State and the cantons is in conformity with the principle of allocation: the Confederation exercises only those spheres of competence which are expressly allocated to it by the Constitution, the cantons remaining sovereign provided their sovereignty is not limited by the Constitution. As such, the cantons exercise all the rights which are not delegated to the federal power.

18. In the case which concerns us, a large proportion of policy with regard to children and young people is within the competence of the cantons, notably all matters relating to compulsory schooling, the execution of penalties, certain parts of the health policy, the promotion of culture and substantial sectors of social policy (notably responsibility for children outside the family).

19. It follows from this sharing of competence that at the federal level several offices are responsible for matters relating to children at the national level, notably:

Federal Office for Social Insurance, within the DFI, for matters relating to social insurance and certain coordination functions within the sphere of protection of the child (Central Organization for Family Questions);

Federal Office of Public Health, within the DFI, for problems relating to AIDS and drugs;

Federal Office for Culture, within the DFI, which devotes particular attention to questions relating to young people;

Federal Office for Education and Science, within the DFI, and the Federal Office for Vocational Training and Technology, within the Federal Department of Economic Affairs (DFE), which deal with questions relating to schooling and training for which the federal authorities are responsible;

Federal Offices of Justice, the Police, Foreigners and Refugees, within the Federal Department of Justice and Police (DFJP), for law relating to marriage, the family, divorce, adoption and guardianship, and also for nationality, the placement of children, refugee children, family reunification, traffic in and abduction of children, sexual offences, incest, sexual tourism and assistance to victims of offences;

Federal Bureau for Equality between Women and Men, within the DFI, notably for violence within the couple and the family, sexual abuse and tourism, and encouragement of girls to train in the technical and scientific professions;

Federal Sports College at Macolin, within the Federal Department for Defence, Civil Protection and Sports (DDPS), for sporting activities and the "Youth and Sport" programme;

State Secretariat for Economic Affairs, within the DFE, for matters relating to child labour and unemployment insurance.

20. The following federal offices are responsible for matters relating to children at the international level:

Directorate for International Public Law, within the Federal Department of Foreign Affairs (DFAE), for the drafting of reports concerning the Convention. This Directorate, together with the Political Division for Human Rights and Humanitarian Policy within the same Department, assumes responsibility for the promotion and protection of the rights of the child at the international level, in cooperation with other States, the various international (global or regional) agencies and civil-society organizations;

Agency for Development and Cooperation, within the DFAE, for matters relating to assistance to developing countries, taking account of children's needs.

21. It should be mentioned at this point that the preparation of the present report has not only provided an opportunity to undertake a global examination of the various measures taken to ensure implementation of the Convention. This work has also contributed to better coordination between the above-mentioned offices competent in the area of the rights of the child.

E. Measures taken to make the principles and provisions of the Convention widely known (art. 42)

22. Switzerland is convinced that, in order to publicize the principles and provisions of the Convention nationally, it cannot dispense with a diversified broadly-based public-relations effort. It is also essential to identify those measures which are best able to influence the world of children and young people. In this connection, it may be stated that in Switzerland, generally speaking, the authorities responsible for these matters are willing to organize campaigns not only for young people, but also with them.

23. To this end, action has been taken on many fronts and at different levels, using various channels of communication:

(a) The process of Switzerland's accession to the Convention made it possible for public opinion to become familiar with the principles concerned. This was due to the broad parliamentary debates which preceded accession and the attention given them in the media;

(b) In the context of legislative procedure at the federal level, the Swiss Government systematically refers to the Convention in work relating to its sphere of application. This procedure must (a) guarantee legislation consistent with the Convention, and (b) help to ensure that the fundamental ideas contained in the Convention guide the work of the legislative, executive and judicial powers;

(c) Certain activities are organized on the occasion of Rights of the Child Day[14] (every year on 20 November) and Swiss Parent Education Day (every year on the second Saturday of September). These events constitute ideal platforms for publicizing the principles and content of the Convention. They also provide an opportunity for taking up specific subjects which children regard as important;

(d) Through financial assistance the Confederation supports specialized non-governmental organizations (NGOs) which initiate extremely diverse activities or events highlighting the aspirations and rights of children. By way of example, mention may be made of:

"Kinderlobby Schweiz" and "Schweizerische Kindernachrichtenagentur", which have received contributions for their practical work on implementation of the Convention;

Education and Development Foundation;

Centre for Human-Rights Advice and Support for Young People (CODAP);

International Centre for Training in the Teaching of Human Rights and Peace (CIFEDHOP);

Defence for Children International (DEI) - Swiss section;

Swiss Committee for UNICEF;

Swiss Committee for Youth Activities (CSAJ).

In addition, the information meetings held once or twice a year between the federal administration and NGOs reinforce cooperation between these players in the area of protection of the child. The seminar organized on 5 February 1999 on the subject of mediation work for children and young people is one example of the cooperation between the administration and NGOs;

(e) Switzerland has also financed specific projects such as:

- A competition for Swiss primary and secondary schoolchildren, organized in 1998 in cooperation with the Swiss Committee for UNICEF, on the subject of their rights and the situation of the rights of the child throughout the world. Every class presented its conception of this subject by painting a flag. At the same time, the many participating schools were encouraged to adopt the rights of the child as a subject for education and discussion, in order to arouse the interest and understanding of children. For the final event, the organizers invited to Bern the pupils of 10 classes who had the opportunity to discuss the importance of human rights with male and female politicians and, in particular, with Ruth Dreifuss, Chief of the DFI, who was also President of the Confederation. In 1999, the winning flag was depicted on a Swiss postage stamp and, because of the wide publicity attached to it, this activity enabled many schoolchildren to play a direct part, through artistic means and their discussions, in increasing awareness of the fundamental principles of the Convention.

- A study on the state of school and para-school education in the rights of the individual in Switzerland, as defined in the existing international instruments. This study made it possible to identify the efforts that remain to be undertaken in order to improve the dissemination and knowledge of the principles set forth in the Convention.

- As regards the non-school area a questionnaire on education in the rights of the individual, which the Human Rights Academy addressed to further training institutions, NGOs, universities, the police, the media, and associations working in the field of cooperation for development and in the social sphere;

(f) The extra-parliamentary commissions also play an important role in the area of publicity. These bodies, set up by the Confederation, perform public tasks for the Government and the administration.[15] The following federal commissions engage in work on the implementation of the Convention on the Rights of the Child: Commission on Foreigners,

Commission on Refugees, Commission on Women's Questions, Youth Commission, Commission against Racism and Commission for the Coordination of Family Questions. The reports on the activities of these commissions provide information on the work they do in the area of policy on children;

(g) The bulletins regularly published by the various federal offices are also an effective means of publicizing the Convention, because they are sent to a very wide range of recipients outside the federal administration. Mention may be made, by way of example, of Questions familiales, the information bulletin of the Central Organization for Family Questions (Federal Office of Social Insurance, DFI), which is published three times a year, or La Suisse et le monde (DFAE), which, in 1998, devoted the bulk of one of its editions to the rights of the individual;

(h) In the context of its Conference Service, the DFAE proposes, among many other subjects, that of Switzerland's commitment to the rights of the child. Responding to invitations from schools, associations and institutions, specialists from this Department give them the benefit of their knowledge;

(i) In 1998, the DFAE commissioned outside specialists to prepare appropriate didactic material on the subject of the Convention. Early in 1999, the material was sent to teachers (especially teachers in primary and junior secondary schools - the period of compulsory education) in the context of the Journal suisse des enseignantes et enseignants;[16]

(j) At the cantonal and communal levels, the youth commissions and "Youth parliaments" play an extremely important role. They constitute excellent channels for publicizing and implementing the rights of the child;

(k) The Conference of Cantonal Directors of Education (CDIP) is a forum for meetings of the cantonal executive organs responsible for the education system. At the national level, it performs organizational and coordination functions in the sector of education and training. Through the Federal Office of Education and Science, which works in close cooperation with the CDIP, the Confederation monitors work on the implementation of policy on children in schools;

(l) The fundamental principles of the rights of the child have, throughout Switzerland, been reflected in legislation on schools, ordinances, curricula and pedagogical guidelines. In addition, some cantons have expressly integrated the Convention in their curricula,[17] whereas the others mention it in their courses (history, civic education, preparation for choosing an occupation, etc.), generally in relation to the Universal Declaration of Human Rights;[18]

(m) The Convention is also the subject of training courses in teacher-training colleges and other educational institutions (parent education, social institutions). In fact, in all teacher-training colleges, the requirements of the Convention constitute one of the bases of teacher training;[19]

(n) Large-scale information campaigns have been undertaken in the various cantons in order to make the Convention known to a wide public, in particular:

In Lucerne, "Pro Juventute" and the "Kinag" (Kindernachrichtenagentur), in 1995, developed projects for Children's Day and published a calendar on the rights of the child;

In Valais, the Kurt Bösch University Institute has published a brochure and organized an exhibition publicizing the Convention;

In Geneva, Children's Day (20 November) is always an opportunity to organize events intended for a wide audience;

Ticino hosts an itinerant exhibition known as "Diritti dei bambini", whose impact is strengthened by means of brochures and television advertisements on the rights of the child;

Basel reports the educational event "Welt in Basel", organized by private individuals and embodying the themes of the Convention.

In addition, local and private initiatives are taken in many cantons to publicize the rights of the child.

(o) The electronic media governed by public law display great interest in broadcasting programmes on the rights of the child and cooperating with the administration's services in this area. One of the most interesting media in this respect is Internet. Younet,[20] a non-profit association comprising several organizations working for and with young people, offers on the Internet a platform providing copious information. Younet thus intends to serve, on the Internet, as a focal point for all matters relating to young people. It receives financial support from the Federal Office for Culture and from the Youth, Family and Prevention Division of the canton of Basel-Stadt. Younet may be consulted in French, German and Italian.

F. Dissemination of reports (art. 44 (6))

24. The Directorate for International Public Law within the DFAE has coordinated the work of drafting the present report. To this end, it has chaired an interdepartmental working group composed essentially of representatives of the following services within the federal administration:

Federal Bureau for Equality between Women and Men;

Federal Office for Culture;

Federal Office of Public Health;

Federal Office for Statistics;

Federal Office for Social Insurance;

Federal Office for Education and Science;

Federal Office of Justice;

Federal Police Office;

Federal Office on Foreigners;

Federal Office for Refugees;

Federal Office on Sports;

State Secretariat for Economic Affairs;

Division of Human Rights Policy and Humanitarian Policy.

25. As already mentioned above, a substantial proportion of the work of implementing the Convention lies within the competence of the cantons, which have accordingly been very closely associated with the preparation of the report by means of a questionnaire. The Conference of Cantonal Directors of Social Affairs has collated and summarized the cantons' replies.

26. In addition, a broad consultation procedure has been undertaken with the partners concerned, the cantons, NGOs, the Federal Commission on Women's Questions, the Federal Commission on Foreigners, the Federal Commission for the Coordination of Family Questions, the Federal Commission on Refugees, the Federal Commission on Young People and the Federal Commission against Racism, and with various interested circles. Within a period of four and a half months, all of them have been able to give their opinion on this report.

27. It has to be acknowledged that, because of its extent, this process has also been an important means of publicizing the principles and provisions of the Convention among a broad circle of recipients.

28. This report has been drafted in the three main official languages of the Confederation (German, French and Italian). It can therefore be consulted by a broad audience in these languages. In addition, it is planned to publish a special edition of this report (also in the three languages) including the conclusions and recommendations of the Committee on the Rights of the Child.[21]

29. It should also be mentioned that a summarized version has been prepared with a view to ensuring the broadest possible dissemination of the principles contained in the Convention and their implementation in our country. This document - also translated into the three languages - will be widely distributed (cantons, administration offices, NGOs, media, universities, political parties, interested circles).

G. International cooperation

30. Generally speaking, Switzerland endeavours to focus its official assistance on poor countries, regions and populations of the third world, while striving, inter alia, to take account of the needs of children. Switzerland attaches particular importance to the human dimension of development and to social development. It gives practical effect to this priority by stressing human development, the balanced development of men and women, enabling people to determine their destiny (empowerment) and action to combat poverty. These guidelines make it possible to promote forms of development which are favourable for children.

31. From the standpoint of problems relating to children, Switzerland attaches great importance to the establishment of an economic and social framework which will create a favourable environment for their development. Thus, the advancement of children is dealt with on a transversal basis, in the same way as action to combat poverty, the balanced development of men and women, and environmental protection. In the establishment of programmes, particular emphasis is placed on the foreseeable effects of planned measures on the situation of children.

32. In Switzerland, it is the Development and Cooperation Agency (DDC) within the DFAE which plays a lead role in cooperation for development.

1. Bilateral activities

33. In the bilateral area, Switzerland supports numerous projects in the spheres of education, health (mother and child health, reproductive health), agricultural production (when this promotes nutrition and food security), action to combat poverty and the creation of paid employment directly benefiting children.

34. Switzerland also supports specific activities for children through Swiss NGOs, notably Caritas, Enfants du monde, EPER, the Pestalozzi Children's Village Foundation in Fribourg, Terre des hommes-Lausanne, Terre des hommes-Suisse, in Basel and Vivamos mejor (total DDC contributions to Swiss NGOs: Sw F 124 million in 1997).

35. By way of example, it may be mentioned that, since the 1980s, Switzerland has financed a project in Bangladesh entitled "Underprivileged Children's Educational Programme" (UCEP) with the Swiss NGOs Enfants du monde and SKIP (contribution of Sw F 1.1 million a year).

2. Multilateral activities

36. Multilaterally, Switzerland supports, by means of general contributions, international organizations directly or indirectly active in the sphere of children: UNICEF (Sw F 17 million 1998), UNAIDS[22] (Sw F 2.2 million, 1998), UNFPA [23] (Sw F 11 million, 1998), WHO, (Sw F 4.8 million) and UNDP (Sw F 54 million, 1998). These contributions have direct or indirect effects on the well-being of children around the world.

37. By supporting UNCIEF (Switzerland is one of the 12 largest donors), whose principal mandate is the protection and defence of children's rights, Swiss cooperation contributes directly to the improvement of the situation of children. Switzerland supports specific UNICEF

(humanitarian or development) programmes in average annual amounts of the order of Sw F 4 to 5 million. In 1995, UNICEF established a Global Fund for Women and the Girl Child. This trust fund, which had a budget of US$ 3 million in 1995, is financed by voluntary contributions from donors, notably Denmark, Canada, the Netherlands and Switzerland. Switzerland made a contribution of Sw F 900,000 in 1995. The Fund's essential objectives are as follows:

To redefine roles in the family and improve the participation of men in family responsibilities and work;

To combat discriminatory attitudes and certain practices which have a negative impact on the survival and development of girls (early marriage, genital mutilation, infanticide of girls and prenatal sex selection).

38. In addition, Switzerland has supported a UNICEF programme for the advancement of girls in Pakistan.

3. Humanitarian activities

39. In armed conflicts and natural disasters, children often lose their parents and other relations, and become displaced persons in their own country or refugees. During the first phase of a conflict, the chief objective of humanitarian assistance is to protect children and guarantee their survival through access to medical care, housing, drinking water and food. In the post-conflict situation, the objective is to achieve the reintegration of children in their family: tracing the child's parents or relatives, provisional acceptance of orphans in receiving families or centres.

40. In order to coordinate its activities with those of other institutions active in the humanitarian field, Switzerland cooperates closely with UNHCR, ICRC, the World Food Programme (WFP) and UNICEF.

41. Switzerland's humanitarian aid stresses the protection and promotion of children at several levels, mainly by financing the various relevant United Nations programmes: UNHCR, Sw F 28.4 million; WFP, Sw F 25.6 million; other institutions (ICRC, Sw F 81 million) and Swiss NGOs (Sw F 37 million); next, through financial contributions to specific programmes of international organizations or by making available material and personnel; and lastly, through particular activities in various spheres.

42. As examples of humanitarian assistance to children, mention may be made of the following:

Family reunification;

Demobilization of child soldiers;

Psychological rehabilitation of traumatized children;

Construction and rehabilitation of schools;

Training of refugee children until they return to their countries;

Mines (prevention, demining, medical assistance, creation of prostheses);

Support for unaccompanied children;

Protection against epidemics (vaccinations, prevention);

Support and follow-up of children in prison.

43. Switzerland's contribution to official development assistance (ODA) for children amounted to Sw F 1,217 million in 1997, broken down as follows:

- 13 per cent was devoted to education, information and culture;
- 8 per cent to health, nutrition and population studies;
- 16 per cent to arable farming and stockbreeding;
- 9 per cent to forestry and the environment;
- 14 per cent to infrastructure, water and energy;
- 6 per cent to crafts, industry and commerce;
- 5 per cent to the global economy, financing and services; and
- 3 per cent to social policy, administration and justice.

44. Thirty per cent of total ODA is devoted to multilateral cooperation (contributions to United Nations agencies such as UNICEF and UNDP, to the development banks and to their special funds).

II. DEFINITION OF THE CHILD (art. 1)

A. The definition of the child in Swiss law

45. The definition of the child in Swiss law is identical to that in the Convention, since under Swiss family law every person is considered to be a child up to the age of 18, when he or she attains majority (Swiss Civil Code (hereafter CC) art. 14).

B. The age limit for children to exercise their rights and fulfil their obligations

46. As regards the minimum legal age for the exercise of certain rights, Swiss law is based, generally speaking, not on age but on "legal capacity". The Swiss Civil Code makes a distinction between the enjoyment and exercise of rights. Whereas all persons possess civil rights (CC, art. 11 (2)) from birth, in that they can become subject to rights and obligations, only persons who have attained majority and are capable of forming their own views can exercise civil rights and may, by their own acts, give rise to rights and obligations (CC, arts. 12 and 13). In accordance with this definition, children do not satisfy the majority requirement and cannot

therefore exercise civil rights. Depending on their maturity, however, children may be capable of forming their own views and therefore be able to exercise certain rights. In article 16 of the Civil Code the ability to form one's own views is taken to mean the ability to act reasonably.

47. Whereas the acts of a minor incapable of forming his or her own views do not in principle have legal effects (CC, art. 18), minors capable of doing so may enter into obligations with the consent of their legal representative (in principle the parents [CC, art. 304 (1)] or exceptionally a guardian [CC, arts. 368 (1) and 407 (1)]) who represents the child in respect of third parties (CC, art. 19 (1)). In addition, the law confers certain rights on minors capable of forming their own views. Children capable of forming their own views may, without the consent of their legal representative:

> Acquire property gratuitously (CC, art. 19 (2)); this in particular concerns their right to receive donations or legacies free of charge;
>
> Exercise strictly personal rights (CC, art. 19 (2)), namely, rights that are very closely bound up with the personality of each individual, so that the notion of self-determination is of particular importance. Personality means the entire range of physical, mental, moral and social characteristics constituting a person by virtue of his or her existence. Such personality rights include the right to life, to physical, mental and moral integrity and the right to enjoy respect for private and intimate matters, as well as the right to honour and freedom of movement. The exercise of these rights within the meaning of article 19 (2) of the Civil Code consists not only in the ability to perform juridical acts, but also the ability to have them enforced at law. In the framework of their strictly personal rights, therefore, minors capable of forming their own views can by themselves bring proceedings and also appoint a lawyer to defend their interests.

48. The possibility of having rights enforced in an independent manner therefore depends not only on the child's capacity to form his or her own views but also on whether the right in question is of a strictly personal nature. A series of special rules supplements the general provision in article 19 (2) of the Civil Code either by requiring the consent of the legal representative or by fixing a specific age for the exercise of certain rights.

49. For example, the Federal Court has recognized that under-age patients may on their own consent to the medical treatment proposed to them if they are capable of forming their own views, since this is a matter that involves a strictly personal right within the meaning of article 19 (2), of the Civil Code adding that consent should be evaluated by the doctor in the light of the problems posed by the operation.[24] The legal representative should be called upon to intervene whenever there is a doubt about the minor's ability to make an objective evaluation of all aspects of the proposed operation. Children capable of forming their own views may therefore have medical consultations and consent to treatment without the agreement of their legal representative.

50. Minors may not, on the other hand, conclude any contract of employment without the consent of their parents (CC, art. 19 (1)). The Labour Act (LTr.)[25] contains specific provisions for the protection of minors. The text of this Act was amended by popular ballot at the end of

November 1998. Its article 30 fixes the minimum working age at 15 years.[26] Moreover, the hiring of young persons (workers of both sexes under 19 years of age and apprentices under 20 years of age[27]) for specific types of work may be prohibited by an ordinance or made subject to certain conditions in order to protect their life, health or morals.[28] Exceptions may be made on the basis of an ordinance concerning light work that children can perform from the age of 13, as well as the activities of children of under 15 in connection with cultural, artistic or sports events and in advertising.

51. As regards capacity to marry, a person may not contract marriage before the age of 18 (CC, art. 94), and the consent of the minor's legal representative is required for betrothal (CC, art. 90 (2)).

52. On the other hand, all individuals, regardless of age and even if incapable of forming their own views, enjoy the right to inherit, providing that they were live-born (CC, art. 544 (1)).

53. As for participation in proceedings which concern them, the children act as parties by virtue of their capacity to enjoy rights (CC, art. 11). Children capable of forming their own views may act alone in legal proceedings to ensure enforcement of a strictly personal right within the meaning of article 19 (2) of the Civil Code. Furthermore, according to article 323 (1) of the Civil Code, children have the right to administer and enjoy the product of their labour and the assets with which their father and mother provide them in order to engage in a profession or trade. This principle concerns work based on a valid contract of employment for the conclusion of which the children require the consent of their parents (CC, art. 19 (1)). The children acquire complete civil and procedural capacity in respect of the assets referred to. Their parents' power of representation therefore lapses. Apart from these cases, children can act only with the agreement of their legal representative by whom they will, in general, be represented. In representing the child, the parents must take the child's views into account as much as possible in important matters (CC, art. 301 (2)). Where a certain matter is likely to oppose the interests of the child and those of his or her legal representative, a guardian ad litem should be appointed to represent the child (CC, art 306 (2)) and the parents' power of representation lapses.

54. Since these rights are of a strictly personal nature within the meaning of article 19 (2), of the Civil Code children capable of discernment may by themselves submit a request to change their name (CC, art. 30) and consent to their adoption (CC, art. 265 (2)). In principle, however, the consent of the parents to the adoption is also required (CC, art 265a (1)).

55. As for children's right to be informed of their biological parentage in the case of medically assisted procreation, the Federal Act on Medically-Assisted Procreation of 18 December 1998 (LPMA)[29] states that it is the child's right, regardless of age, to request information of any kind concerning the sperm donor if he or she is able to invoke an interest worthy of protection.[30] A child of over 18 is not required to invoke an interest of this nature in order to obtain information.

56. Article 15 of the Constitution guarantees freedom of religion and conscience. According to article 303 (3) of the Civil Code, children of 16 have the right to choose their religion by themselves.

57. The Federal Spirits Act[31] makes it illegal to provide children and adolescents of under 16 years of age with alcoholic beverages and those of 18 years of age with distilled beverages.[32]

58. Lastly, the period of compulsory education is 9 years and in general ends when the child reaches the age of 15.[33]

59. At the present time, the child may be subject to the special provisions of the Swiss Criminal Code (CP) concerning minors.[34] Children of under 18 years of age are considered to be minors for the purposes of criminal law. In this case the special provisions concerning minors contained in articles 83-88 of the Criminal Code for children of 7 to 15 years of age and in articles 89-99 of the Criminal Code for adolescents of 15 to 18 years of age are applicable. The Criminal Code is not applicable to children of under seven. As mentioned above, on 21 September 1998 the Government submitted to Parliament the draft of a new federal act governing the criminal status of minors (P-CPMin)[35] which states that the age of criminal responsibility is to be raised from 7 to 10 years (P-CPMin, art. 3).[36] As regards the capacity to testify, it should be noted that criminal procedure, like civil procedure, is a matter under the jurisdiction of the cantons. Some cantons do not indicate an age limit for giving evidence but most of them fix it at 12, 14 or 15; moreover, a witness must, generally speaking, have reached the age of 18 in order to give evidence under oath. Lastly, as regards the lodging of a complaint, a distinction is made between an offence prosecuted proprio motu or on the basis of a complaint. When it is prosecuted proprio motu it may be brought by any person, regardless of age, the only requirement being that the person concerned should be able to express himself or herself in some way or other. If it is prosecuted on the basis of a complaint, the complaint may be brought by any injured party. If the injured party cannot exercise civil rights, the complaint must be brought by his or her legal representative. If the injured party is under tutorship, the right to bring the complaint also belongs to the tutorship authority. An injured party of at least 18 years of age and capable of discernment, also has the right to bring a complaint (CP, art. 28 (3)). The draft federal act governing the criminal status of minors proposes that minors should be able to bring a complaint if they are capable of forming their own views (art. 30 (3)). (See the commentary relating to art. 40 of the Convention.)

III. GENERAL PRINCIPLES

A. Non-discrimination (art. 2)

1. The principle of equality before the law and prohibition of discrimination

60. The general principle of equality before the law requires that all individuals should be treated on the basis of the same legal rules in all legal situations and in daily life. It is not confined to certain sectors but is applicable in all areas of law.[37] Generally speaking, equality before the law and the prohibition of discrimination in Switzerland stem from article 8 of the Federal Constitution, as well as other international instruments, namely, the European Convention on Human Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women.

61. The principle of equality before the law within the meaning of article 8 (1) of the Federal Constitution is an independent constitutional right. It guarantees in a general way the equality of individuals before all State bodies,[38] and particularly before police bodies and the courts. The Federal Court considers the principle of equality before the law to be violated if identical situations are not handled in the same manner in accordance with their similarity, or if different situations are not handled in a different manner, in accordance with their distinct nature.[39] Equality before the law is a principle which is applicable as much to legislative activity as to the application of the law.[40] In the context of the principle of equality before the law, inequality of treatment may be admitted if the actual situations at its origin are genuinely different from the standpoint of constitutional law. In all cases of inequality of treatment, the court should determine objectively the extent to which differentiation appears to be justified in the light of actual situations.[41]

62. Article 8 (2) of the Federal Constitution lists a number of grounds that cannot be used to justify differences in treatment, namely, origin, race, sex, age, language, social position, way of life, religious, philosophical or political convictions or physical or mental disability. The list is not, however, exhaustive so as to allow case law to develop freely and thereby to prohibit new sources of discrimination.

63. Since equality before the law is a universally applicable personal right, it is enjoyed by all persons, whether minors or of age and whether of Swiss or foreign nationality. It should be noted however that foreigner status could constitute grounds for a difference in treatment if Swiss nationality is of fundamental importance in a specific case; article 121 of the Constitution therefore confers on the Confederation the right to regulate the entry, departure, stay and residence of foreigners.

2. Legislative instruments

64. The principle of the prohibition of discrimination is implemented by a variety of different laws.

65. As regards racial discrimination, special mention should be made of new article 261 bis of the Criminal Code - in force since 1 January 1995 - which reads as follows:

> "Racial discrimination
>
> Any person who, in public, incites hatred or discrimination against a person or a group of persons for racial, ethnic or religious reasons;
>
> Any person who, in public, propagates an ideology intended to disparage or defame in a systematic manner the members of a race, ethnic group or religion;
>
> Any person who, for the same purpose, organizes, encourages or participates in propaganda activities;

Any person who, in public, by word of mouth, in writing, with pictures, with gestures, by assault or in any other manner humiliates or discriminates against a person or group of persons in a way affecting their human dignity on account of their race, ethnic origin or religion or who, for the same reason, denies, grossly minimizes or seeks to justify genocide or other crimes against humanity;

Any person who refuses to provide a public service to a person or group of persons on racial, ethnic or religious grounds shall be punished by imprisonment or a fine."

66. All these acts are prosecuted proprio motu. The cantonal courts have so far handed down about 60 sentences in this connection. On 5 December 1997, the Federal Court rendered its first judgement in application of this new criminal provision[42] in a case that involved the sending of several letters containing anti-Semitic remarks.

67. Swiss legislation (particularly the Federal Act concerning Assistance to Victims of Offences of 4 October 1991[43]) enables the victims of racist aggression affecting their physical, mental or sexual integrity to obtain reparation.

68. As regards equality between the sexes, it may be recalled that article 8 of the Constitution contains a provision that deals specifically with this point, which reads "Men and women have equal rights. The law provides for legal and factual equality, particularly in the family, during education, and at the workplace. Men and women have the right to equal pay for work of equal value."

69. At the legislative level, the equality of the sexes in labour matters is guaranteed by the Federal Act concerning Equality between Women and Men[44] which in particular spells out the equal pay principle. Equality of treatment can therefore be ensured throughout all sectors of the economy. This Act is applicable to all men and women workers, irrespective of whether their labour relationships are governed by federal, cantonal or communal private or public law.

3. Measures[45]

70. (a) A Federal Commission against Racism (CFR) was established following Switzerland's accession to the International Convention on the Elimination of All Forms of Racial Discrimination. This Commission comprises representatives of minorities, religious communities, NGOs with specific commitments in this area, conferences of cantonal police and public education directors as well as social partners and experts. It deals with the problem of racial discrimination and seeks to bring about a better understanding between persons of different races, colour, origins - national or ethnic - and religions. It combats all forms of racial discrimination, either direct or indirect, attaching special importance to prevention, and informs citizens about ways and means in law of dealing with their conflicts in this sphere, clarifies the facts and endeavours to bring about conciliation, although it does not possess any decision-making power. Lastly, it also publishes periodic reports on topical subjects.[46] Since autumn 1997 the Commission has been publishing the review Spock which is directed at young men and women workers. It contains information on subjects such as equality of opportunity, multilingualism and prejudice in order to reaffirm the fact that coexistence without exclusion is also possible in the world of work;

(b) In the framework of the Council of Europe, the Confederation has associated itself with the "European Youth Campaign against Racism, Xenophobia, Antisemitism and Intolerance".[47] A fund was set up to support the activities undertaken by young persons at the local, regional and national levels. The public at large was made aware of the need to develop a more tolerant and open society. The purpose of this campaign was to encourage the population, and particularly young persons, to take an active part in combating any form of racism, xenophobia and intolerance. It was in this context that the brochure "Liebe Schweiz - Jungendliche aus Bosnien-Herzegowina schreiben" was published by the National Coalition Building Institute (NCBI), an organization of public interest, non-denominational and politically neutral, which is committed to bringing about a society that is more tolerant and to combating racism, anti-Semitism and xenophobia;

(c) The Conference of Cantonal Directors of Public Education (CIDP) has confirmed, in its Declaration "Racism and the School",[48] that foreign children and adolescents must be integrated without reservation and that their culture should be held in esteem and regarded in a positive manner. In the view of CIDP, tolerance and peace should be taught at school. The purpose of teaching and education in the school context should be to make children aware of and combat overt and concealed forms of racism, and also to encourage open and frank exchanges of views with foreigners or groups of foreigners;

(d) Important measures have also been adopted to combat racist propaganda on the Internet. Switzerland is well in the forefront in this connection, and it is worth pointing out that a large number of the proposals and recommendations adopted on this subject at the expert seminar held from 16 to 18 February 2000 in connection with preparations for the World Conference against Racism have already been implemented in Switzerland. These proposals and recommendations have been transmitted to Internet access providers as well as to the government agencies concerned[49] and various measures have already been adopted in Switzerland;[50]

(e) In addition, training programmes have been introduced for police officers and the guards of prison establishments which are intended above all to reduce the number of cases of police brutality of which persons of foreign origin have been victims;

(f) On the basis of the Platform for Action adopted at the Fourth World Conference on Women at Beijing in 1995, the Federal Council instructed a working group within the federal administration to elaborate a plan of action for Switzerland. This plan of action entitled "Equality between women and men" was published in June 1999 and contains, in chapter L dealing with young girls, a series of measures designed to eliminate discrimination in the fields of training, statistics, violence, health, work and youth activities.

Since 1995, there has been increasing awareness of the need to take into account the diversity of situations of girls and boys as well as male and female adolescents and to reflect it in policies targeting the two sexes (see chapter on training);

(g) The Federal Office for Equality Between Women and Men was established in 1988. It is responsible for promoting equality between the sexes in all spheres of life in society. It is committed to the elimination of all forms of discrimination against women and

elaborates decisions and measures designed to promote and ensure equality. It works in cooperation with federal, cantonal, communal and non-governmental bodies active in this field. It provides advice to the authorities as well as to individuals, and prepares and supports projects for the promotion of equality between the sexes. It informs the public and participates in projects of national importance. It provides financial assistance for the promotion of programmes designed to foster equality between women and men in their professional activities and particularly in vocational training matters, and thereby supports the integration of girls in types of training traditionally regarded as reserved for boys. Each year the Federal Office awards a "Zora la rousse" prize worth Sw F 10,000 for media directed at children and adolescents. This award should have the effect of promoting recognition of the important role played by the media in shaping the opinions of young persons of the roles of women and men and also of making specific projects more accessible to the group in question. Cultural projects developed by the media for children and young persons (theatre, dance, music, literature, cinema, school projects, exhibitions) dealing with equality between girls and boys and between women and men which call in question behaviour that is specifically connected with a certain role or which highlight new and novel forms of organizing life in the community are singled out;

(h) Offices for Equality between Women and Men have been established at the cantonal and communal levels to promote equality between men and women as well as between boys and girls;

(i) There is also a Federal Commission on Women's Questions which has strengthened its general work of providing information on various equality-related topics. The purpose of this Extraparliamentary Commission which was set up in 1976 is to advise the Government on the stand it should take on all questions relating to equality between women and men and to provide information to the public and the authorities. The Commission has on many occasions tackled topics dealing with family policy and children. Specifically, it has published a voluminous report on care facilities for children and undertaken a study on relationships between girls and boys in the context of extracurricular youth activities.

B. Best interests of the child (art. 3)

1. The best interests of the child in the Swiss legal system

71. The best interests of the child constitute a guiding principle of Swiss law. As mentioned above, the Federal Constitution accords to children and young persons a special place in the enumeration of fundamental rights and social objectives.

72. This guiding principle is reflected in various laws and particularly in the Civil Code, which is the cornerstone of family law. The principle of the best interest of the child is referred to on a number of occasions.

73. The interests of the child are of paramount importance in the context of the exercise of parental authority. For example, according to article 301 of the Civil Code, the parents decide what care and education is to be received by the child "for his or her own good" and take the necessary decisions "subject to the child's capacity". Parental authority must therefore respect

the child's personality rights. The legal framework of the parent/child relationship is therefore determined by the interests of the child. Moreover, the area of parental decision-making is delimited by the interests of the children, their capacity to act and the measures taken to protect them.

74. The recent amendment of the Swiss Civil Code, which among other things, concerned divorce and filiation law,[51] was based on the principle of ensuring optimum protection of the interests of children. Greater account is at present taken of these interests, particularly in divorce or separation proceedings. Parental authority can now be exercised jointly by divorced couples or concubines. The right of access becomes a reciprocal right of parents and children.

75. Similarly, under the heading "Protection of the child", article 307 of the Civil Code makes it incumbent upon the tutorship authority to take appropriate measures to protect children if their development is threatened and if their parents fail to remedy the situation themselves or are unable to do so. The same is true of children placed with foster parents or children living outside the family unit.

76. The interests of the child are also of decisive importance in decisions involving the transfer of parental authority to a father who is not married to the mother (CC, art. 298 (2)) in matters of adoption, which must peremptorily serve the best interests of the child (CC, art. 264), as well as in decisions to withdraw the right to maintain personal relations (CC, art. 274).

2. Attention paid to the principle of the best interests of the child in practice

77. The case law of the Federal Court and the cantonal courts, as well as the decisions of administrative authorities and social welfare bodies, reveal the importance that is unquestionably attached to the principle of the best interests of the child.

78. For example, according to the Federal Court's case law, the best interests of the child play a key role in the attribution of parental authority in divorce proceedings. At the decision-making level, children may be heard by the court dealing with the divorce or by a third party unless there are important reasons for not doing so. Furthermore, a lawyer responsible for representing the child's interests may be appointed by the court during the proceedings, particularly if the parents are seriously at odds.

79. The tutorship authority, at the time a choice is made between various possible solutions - such as reminding the parents of their duties, making suggestions or giving instructions concerning the care, education and training of the child, the designation of a person entitled to a right of inspection and information, the appointment of a guardian ad litem, the withdrawal of the right to custody and even of parental authority and the placing of the child under tutorship or, in the most serious cases, the possibility of ordering placement of the child in a suitable establishment[52] - is guided entirely by the best interests of the child.

80. The interests of the child play an essential role at the administrative level in a large number of spheres, such as decisions involving the change of a child's name, where everything is done in his or her interest.

81. Lastly, it may be said in general that the Federal Court has in its case law consistently recognized the principle of the interests of the child as a rule of conduct governing the application of the law "when the future of the child is at stake",[53] particularly in juvenile law.

82. Limits of and possible conflicts in the application of the principle of the best interests of the child are likely to appear above all in the family context. Indeed, paternalistic attitudes may lead the authorities or persons who hold parental authority not to regard the interests of the child as being of paramount importance and therefore to fail to recognize the child as the principal protagonist. Conflicts may also arise where the objective interest of the child is at variance with his or her subjective will. Nevertheless, the fact that the State in general attaches paramount importance to the interests of children and young persons has a considerable positive influence and is helping to change ideas that fail to take sufficient account of the child's interests.

C. The right to life, survival and development (art. 6)

1. The right to life

83. In Switzerland the right to life is guaranteed by article 10 of the Federal Constitution as well as by international instruments, particularly the International Covenant on Civil and Political Rights (art. 6) and the European Convention on Human Rights (art. 2).

84. Furthermore, the death penalty is expressly prohibited in Switzerland both by the Federal Constitution (art. 10 (1)) and the Optional Protocol to the above Covenant aiming at the abolition of the death penalty, and also by Protocol Additional No. 6 to the above-mentioned European Convention. In view of these various international obligations, Switzerland has undertaken not to reintroduce the death penalty. It is therefore abolished irrevocably.[54]

85. The Federal Court has described human life as the primordial aspect of the development of the personality and as one of the intangible core rights relating to personal freedom. The right to life is not confined to physical existence but also guarantees the entire range of physical and moral functions necessary to existence.

86. The question of when protection of the right to life begins remains open but it may be mentioned that at the present time abortion is punished under Swiss criminal law from the moment of nidation in the uterus.[55]

87. As regards the time protection of this right ends, the Federal Court has based its opinion on the criterion of brain death, reflecting recent medical doctrine. What is called active euthanasia is in any event prohibited, since it violates the fundamental principle of the prohibition of intentional homicide (punishable by article 111 of the Criminal Code).

88. From the legislative point of view, the Swiss Criminal Code punishes any form of homicide, and specifically murder (CC, art. 112), murder at the request of the victim (CC, art. 114), incitation to and assistance in suicide (CC, art. 115), and infanticide (CC, art. 116). Endangerment of the life or health of others (CC, arts. 127-129) is also prohibited and general

remedies are available to the victims of these offences in asserting their right to reparation. If necessary, they may seek application of the Federal Act concerning Assistance to Victims of Offences (LAVI).[56]

2. The right to survival

89. Switzerland is a social State, which means that it works to achieve a just social order. Assistance to persons in need has been regarded as an important public duty from time immemorial

90. The right to minimum conditions of existence, recognized by the Federal Court in October 1995 as an unwritten constitutional right,[57] is embodied in article 12 of the Federal Constitution. According to this article, whoever is in distress without the ability to take care of himself or herself has the right to help and assistance and to the means indispensable for a life led in human dignity. The Federal Court's decision making the right to subsistence an unwritten constitutional right gave rise to the initiative of the Steering Committee for Human Rights of the Council of Europe designed to stimulate discussion of a right guaranteeing basic human material requirements and the possibility of invoking this right before the courts. On 19 January 2000, the Committee of Ministers adopted Recommendation No. R (2000) 3 to member States on the Right to the Satisfaction of Basic Material Needs of Persons in Situations of Extreme Hardship. The right is also embodied in article 11 of the International Covenant on Economic, Social and Cultural Rights.

91. In general, it may be said that Switzerland enjoys a high level of social protection. The two essential components of social protection are social insurance and social assistance.[58]

92. Benefits are paid under social insurance schemes when the risk insured materializes. They cover the nine traditional branches of social security and almost all are under the jurisdiction of the Confederation. It may be noted that Switzerland has ratified ILO Conventions Nos. 102 and 128, as well as the European Code of Social Security of the Council of Europe.

93. Social assistance is of a supplementary nature since the only beneficiaries are persons who have no social security coverage, who no longer have such coverage or whose income is inadequate. It consists of allowances guaranteeing a subsistence level plus a wide variety of other benefits. It is operated by the cantons which specify the conditions to be satisfied and the amount of the benefits payable. The Swiss Conference of Social Welfare Institutions (CSIAS) has drawn up schedules for the calculation of social assistance which, in most of the cantons, are used to determine the amount of social assistance benefits (material assistance) payable.

94. The Confederation itself has only ad hoc facilities for providing social assistance: assistance to Swiss nationals abroad,[59] to asylum-seekers and refugees. Assistance is granted as much to foreigners as to Swiss nationals. If the person in distress is a foreigner he or she will also be protected by the law on asylum, namely, by the Federal Asylum Act and its implementing ordinances[60] as well as the Federal Act concerning the Permanent and Temporary Resident of Foreigners[61] and the Ordinance on the Temporary Admission of Foreigners of 25 November 1987.[62]

95. Moreover, the Federal Act concerning Competence in Matters of Assistance to Persons in Need (LAS, RS 851.1) of 24 June 1977 specifies the canton competent to assist a needy person who is staying in Switzerland. The principle of assistance is applied to the place of domicile, both for Swiss citizens and for foreigners. Regardless of where they may be staying, it is assumed that minors share the domicile (for purposes of assistance) of their parents or that of the parent holding parental authority (LAS, art. 7 (1)). In certain exceptional cases, minors may have their own domicile for purposes of assistance, such as the office of the tutorship authority, or when they engage in a gainful activity (LAS, art. 7 (3)).

96. There is also an extensive network of non-State social welfare bodies, such as churches and private institutions, which work side by side with the basic social assistance services comprising the State system.

3. Guarantee of the child's development

97. The child's right to development is guaranteed by domestic law as well as by international instruments, and particularly by article 24 of the International Covenant on Civil and Political Rights.

98. Domestically, various provisions of the Federal Constitution guarantee the child's right to development:

(a) Generally speaking, the protection of the physical and mental integrity of any person is a component part of the fundamental right to personal freedom (FC, art. 10). This provision implies an active role on the part of the State which must therefore shape its legal system to ensure such protection;

(b) The legal system should pay particular attention to children because of their inability to defend themselves against the ill-treatment that may be inflicted on them by their parents or third parties. This specific protection of the personal integrity of children and young people is provided for in article 11 of the Federal Constitution;

(c) This article also explicitly recognizes the right of children and young people to encouragement of their development;

(d) Under the heading of social goals it is stated that not only should the law provide children with special protection but also that they should receive initial and continuing education and be supported in their social, cultural and political integration (FC, art. 41);

(e) Article 67 of the Federal Constitution goes on to say that the Confederation and the cantons should, when fulfilling their tasks, take into account the special needs of children and young people for development and protection;

(f) Basic education (compulsory education) is guaranteed under the Constitution and is free in public schools (FC, art. 19). This enables all children, including those of the most disadvantaged social classes, to develop and to acquire a good level of education.[63]

99. It should also be mentioned that the child's right to development is dealt with under specific provisions of civil and criminal law:

(a) Titles 7 and 8 of the Swiss Civil Code deal with the establishment and effects of filiation, namely, the name and cantonal citizenship of the child, the duties of parents and children in matters of assistance and reciprocity, and the right of the parents to maintain personal relations with their child. The maintenance duty of the parents is also regulated. Generally speaking, parents are required to bring up the child according to their abilities and means by promoting the child's physical, intellectual and moral development;

(b) Under the heading "Protection of the child", articles 307 et seq. of the Civil Code state that the tutorship authority should take the necessary steps to protect children if their development is threatened and the parents fail to correct the situation themselves or are unable to do so;[64]

(c) In the field of labour law, a minor (at least 15 years of age)[65] cannot conclude a contract of employment without the consent of his or her parents. Moreover, there are special rules that protect minors;

(d) As regards criminal law, articles 187 and 188 of the Criminal Code punish acts that endanger the development of minors and acts of a sexual nature with minors or dependent persons.[66]

4. Registration of the death of children

100. Any death and any discovery of a body, whether of a child or adult, must be declared within two days to the Civil Registry Officer who records it in the register of deaths.[67] A stillbirth after the sixth month of pregnancy is not recorded in the register of deaths but in the register of births.[68] The work of Register Office personnel and the keeping of the registers are regulated by Ordinance on the Civil Status.[69] Proof of death must be furnished in the form of a medical certificate.[70] The cause of death is communicated by the doctor to the Federal Office for Statistics but is not indicated in the register of deaths.[71] Depending on the cause of death, the local authorities may open an inquiry on the basis of cantonal codes of criminal procedure.

5. Child mortality

101. Generally speaking, the health of Swiss children is good and improving steadily. Perinatal mortality declined by 35.5 per cent between 1979 and 1992 and early neonatal mortality (before the end of the first week of life) by 40 per cent during the same period. Medical advances and in particular paediatric progress have brought about a considerable decline in mortality during the first year of life. They have also had the effect of reducing mortality caused by malignant tumours. There is every reason to believe that this trend will continue. At the present time the life expectancy of a girl born in Switzerland is 82.1 years and that of a boy 75.3 years.

D. Respect for the views of the child (art. 12)

1. Freedom of opinion of the child

102. Respect for the views of children implies their right to express their views. Freedom of opinion, inextricably bound up with freedom of expression, is enjoyed by any physical or legal person, whether a minor or of age. This freedom (which is analysed in the chapter dealing with freedoms and civil rights) is guaranteed both by article 16 of the Federal Constitution and by the International Covenant on Civil and Political Rights (art. 19), as well as by the European Convention on Human Rights (art. 10). It is essential that the views of the child should be taken into account in every sphere of life.

(a) The parents

103. Family law embodies the principle that the parents, in the exercise of their parental attributes, should grant children the freedom to organize their own lives, depending on their maturity, and should take into account as much as possible their views in important matters.[72] Decisions concerning studies, for example, are generally taken by the parents or the persons legally responsible for the children after having consulted them. This principle is valid not only in respect of the parents but also the parents-in-law, foster parents and the tutor, as well as any other authority having to take decisions concerning the child.

(b) The school

104. Within the school system, each canton takes the views of the child into account, and in all cantons the views of children and young people who are directly concerned by a certain matter are heard. In the event of problems at school, they are systematically included in the search for solutions. The ways in which the cantons take the views of the child into account differ. They may consist in the student's self-evaluation,[73] the appointment of "school mediators" as interlocutors in the event of difficulties at school,[74] or the consideration of the views of the parents - speaking on behalf of their children - in connection with decisions concerning the assignment of students to a school or advancement to a higher class.[75]

105. Hearings and interviews are arranged by teachers, headmasters or headmistresses and or school inspectors, all of whom have pedagogical training and in most cases continue to take advanced courses in this field. Depending on the requirements of the situation, the teaching staff and school representatives cooperate with psychologists, psychiatrists and other experts capable of helping children and young people.

(c) The direct participation of children and adolescents in democratic life

106. There are at present 43 youth parliaments in Switzerland: 23 in German-speaking Switzerland, 17 in French-speaking Switzerland, 1 bilingual parliament at Biel and 1 in the canton of Ticino. Twenty other parliaments are being organized. Participants are between 13 and 25 years of age. Over two-thirds of these youth parliaments have their own annual budget (ranging from Sw F 700 to Sw F 40,000). The young participants undertake projects close to

their hearts, ranging from roller-board tracks to humanitarian assistance in the framework of international cooperation. The powers of the youth parliaments formed recently are steadily expanding and in some cases even include the power to submit motions to the authorities. Cantonal and communal youth parliaments are grouped under the Association of Swiss Youth Parliaments, which represents the interests of young people and acts as an interlocutor with national and international authorities.

107. The Seventh Federal Youth Session was held in November 1998 at Bern (participants being young persons from 14 to 17 years of age). Over 700 young persons had previously discussed, at regional assemblies, the topics dealt with at the Session (asylum policies, development policies, status of men and women, protection of minorities, unemployment among young persons and language policy). The young persons attending the Session expressed the hope that the teaching of a second national language would begin earlier and that teaching of a third national language would become compulsory. They also requested the establishment of an independent body to create an award for Swiss enterprises in terms of their commitment to sustainable development. The youth parliament is also a staunch supporter of the establishment of a Swiss Solidarity Foundation whose services would benefit children and young people, among others.

108. Young persons were also consulted in December 1998 in connection with the amendment of the Constitution of the canton of Fribourg so that their needs could be taken into account in the amendment procedure. They mentioned among other things the decriminalization of soft drugs, respect for human rights, more intensive teaching of languages, the elimination of homework over the weekend and respect for the views of children and adolescents.

109. The canton of St. Gallen has initiated a new form of political participation for young persons with a project entitled "Onwards into the future". Over 250 young persons were able to formulate "visions" at the seven workshops set up in this context which were devoted to topics of mobility, communication, the environment, the community, health, work and training. The "visions" were addressed to the Confederation, the cantons and the communes. The cantonal youth parliament submitted them to the government of St. Gallen on the occasion of the Second Youth Session, held on 7 November 1998. The St. Gallen Youth Council - the "executive body" elected by the youth parliament - will, together with participants in future youth sessions, determine whether the politicians have acted on the requests submitted and whether any progress has been achieved.

110. Children and young people can also sometimes make known their wishes through youth forums or youth councils (for example the Youth Forum of the Hofstetten-Flüh commune in the canton of Solothurn and the St. Gallen Youth Council).

111. There are various types of participation projects, particularly at the commune level. Their purpose is to achieve a better integration of young persons in the life of the commune. In this connection, an advisory council attached to the administration of the canton of Lucerne that provides communes and regions with information on ways of promoting the participation of young persons. Lastly, in the canton of Bern, for example the question of lowering the voting age from 18 to 16 at the commune level is being discussed.

2. The child's right to be heard

112. The right to be heard is guaranteed by articles 29 and 30 of the Federation Constitution, as well as by article 14 of the International Covenant on Civil and Political Rights and article 6 of the European Convention on Human Rights. It has also been given effect by the three Federal Acts on criminal procedure and by the 26 cantonal codes of criminal procedure. As a procedural rule, the right to be heard comes under the legislative competence of the cantons, subject to the procedural rules contained in federal law.

113. Provided that they are capable of forming their own views, children may be parties to a proceeding. They may also take legal action - either alone or through a representative of their choice, even without the consent of their legal representative[76] - if the case concerns one of the rights inherent in their personality. Generally speaking, it may be said that children and young people are heard when their situation is directly affected by proceedings or a certain measure.

114. Although the practice of the cantons differs in the way hearings of children are organized in proceedings of concern to them, it may be noted that particularly important hearings are arranged by specialized services or experts in the field of social work, education, psychology or psychiatry.

115. The cantons have adopted a pragmatic approach in determining the age limit for hearings, which may differ slightly from one canton to another. In criminal law cases, the cantons frequently use the age of compulsory schooling, which also coincides with the age of criminal responsibility - fixed at seven years.[77] In the case of child protection measures and problems of ill-treatment, children under school age must also be questioned, account being taken of their capacity to form their own views and ability to express themselves. Certain cantons hear children from the 24th month,[78] others from "about three years",[79] and yet others refer to "kindergarten age".[80] In all cases, the cantons take into account the specific situation and development of the child. In order to obtain genuinely useful results, hearings are arranged so as to respect the child's world. For example, small children are heard by an expert (social worker or psychologist) in a place familiar to them and in the presence of a person whom they trust, and use may be made of accessories that reassure them.[81] The results of the questioning are often presented in the form of an expert's report and not a legal record. Video recordings are frequently made of hearings so as to avoid subjecting the child to repeated questioning.

(a) Divorce proceedings

116. The recent amendment of the divorce and filiation law has considerably improved the position of children in family law proceedings by expressly guaranteeing their right to be heard.

117. Judges must take into account the child's views in divorce proceedings at the time they attribute parental authority and settle the question of personal relationships.[82] To this end the child should be heard by the judge or by a third party appointed for this purpose.[83] The hearing should take place in suitable conditions, reflecting the child's needs. The nature of the hearing depends essentially on the age, intellectual development and personal characteristics of the child. The age of the child and other important considerations (such as the child's refusal to be heard) may justify dispensing with the hearing.

118. Moreover, the child has the right to submit an application for the modification of the attribution of parental authority when justified by important new facts in his or her interest.[84] The judge may also, if justified by circumstances, order that the child should be represented by a guardian, particularly when the mother and father disagree about the attribution of parental authority, or when required by the tutorship authority if there are doubts about the validity of the shared views of the father and mother concerning the attribution of parental authority or the way in which personal relationships are regulated or where they justify examination of the need to order a protection measure for the child.[85] At the request of a child capable of forming his or her own views, the judge may, on the other hand, order guardianship ad litem.[86] The guardian may submit views in the divorce proceedings and appeal decisions relating to attribution of parental authority, essential questions concerning personal relationships or protection measures for the child.[87] Procedural costs and expenditure may not be chargeable to the child.[88]

119. Judges, even when specialized in divorce proceedings or having training in educational psychology, may consider it necessary to call in psychologists or psychiatrists for a more detailed expert opinion. They will not hesitate to call upon such experts where necessary, particularly in cases of confrontational divorce proceedings.

(b) Procedure in respect of child protection measures

120. In proceedings involving child protection measures, article 314 (1) of the Civil Code states that before ordering a protection measure for the child, the tutorship authority or the third party designated for this purpose shall hear the child personally and in an appropriate manner, insofar as the child's age or other important considerations do not militate against a hearing.

121. These measures are ordered by a civil court judge who, in addition to legal training, has received supplementary training in educational psychology. More detailed inquiries into the situation of children and young people are often undertaken by experts with specific training and experience - usually social workers, educators, psychologists and/or psychiatrists.

122. The interests of children are taken into account on the basis of the statements of parents or guardians ad litem. The children themselves are heard personally when they are considered to be capable of forming their own views, particularly in the event of disagreement between the parents and the child.[89] Children are heard in particular in cases where they are separated from their family. Children placed in a foster family or an institution are questioned regularly about their feelings in the matter.[90] Moreover, in the context of protection measures experts (psychologists or psychiatrists) are often responsible for children who can then also express their views through them.

(c) Establishing or challenging filiation, maintenance and change of name

123. Children maybe parties in proceedings to establish or contest filiation,[91] maintenance[92] and change of name.[93] In principle they are represented by the person holding parental authority. In the event of a conflict of interests between the child and his or her legal representative, a guardian ad litem[94] should be appointed for the child in accordance with article 306 (2) of the

Civil Code. Children capable of forming their own views may act alone in proceedings to establish paternity, to challenge filiation and to change their name in view of the strictly personal nature of the rights involved.

(d) Adoption procedure

124. In this respect the reader is referred to the developments concerning adoption which are covered in the analysis of the implementation of article 21 of the Convention. It should be added, however, that children are invariably involved in discussions concerning their adoption. Furthermore, under Federal law,[95] the consent of a child capable of forming his or her own views is necessary.

(e) Criminal proceedings

125. In criminal proceedings any physical person, whether a minor or of age, has the right to be heard.

126. The questioning is almost always conducted by persons who are particularly alive to youth problems and who have appropriate training - usually juvenile magistrates, police officers with specific training or possibly by experts such as social workers, or psychologists. The child need not be heard in connection with minor offences.

127. Police investigations are often conducted by specially trained police officers. Most of the lawyers and juvenile magistrates have legal training which may be supplemented by other training in special fields connected specifically with work with children. In the juvenile courts, educators or psychologists are often seated next to the juvenile magistrate. Childrens' lawyers and juvenile courts are often assisted by social workers, social educators and/or psychologists who conduct expert inquiries at the request of the judge (such inquiries may also be entrusted to services with adequate resources, such as offices for minors or psychosocial services for children and young people).

128. It should also be mentioned that the new draft federal bill governing the criminal status of minors (P-CPMin) strengthens the position of children in criminal proceedings by granting them the right to be heard personally. Moreover, the draft amendment of the general part of the Criminal Code (P-CP) grants minors capable of forming their own views the right to lodge a complaint.

(f) Procedure under the heading of offences against sexual integrity

129. As regards the problem of hearing child victims of offences against sexual integrity or of ill-treatment in the family unit, it has been found that repeated hearings and unsuitable questioning may traumatize the child even further.[96] In order to prevent the child from experiencing a second psychological shock, called "secondary victimization", all the cantons take steps to ensure that this hearing is of a suitable nature and is conducted by the competent authority or an expert. In order to spare children repetitive questioning or painful confrontations, video recordings are often made of their statement.

130. It may also be noted that the Swiss Government has submitted to Parliament an amendment to the Act concerning Assistance to Victims of Offences (LAVI), which improves the protection provided to minors of under 18 years of age and in particular is intended to mitigate, through procedural measures, the traumatism that legal proceedings may cause to child victims of sexual offences.

131. In all cantons, investigations in this sensitive area are conducted by police officers who have received training or specialized training that prepares them specifically to work with children or young people in difficulty. Furthermore, the victims are taken care of by experts.

(g) Asylum proceedings

132. See the commentary relating to article 22 of the Convention for information about the hearing of children in the context of asylum proceedings.

IV. CIVIL RIGHTS AND FREEDOMS (arts. 7, 8, 13-17 and 37 (a))

A. Name and nationality (art. 7)

1. Registration and name

133. Live births are registered in the register of births,[97] as are stillbirths after the sixth month of pregnancy. Births in hospital must be declared by the hospital authorities. Similarly, when a child is not born in a hospital or institution, the mother's husband, the midwife, the doctor, anyone else present at the birth and the mother are required to declare the birth.[98] The discovery of a foundling or abandoned child of unknown or uncertain parentage is also registered in the register of births.[99]

134. Every newborn has one or more first names and a surname, which immediately confer on the child an identity of his or her own.[100] It should be pointed out that Swiss law protects the child's right to have a first name that is in his or her best interests, in that the registrar may refuse to accept first names that are obviously prejudicial to the child's interests.[101] The Federal Court has stressed on several occasions that the sole deciding factor in the choice of the child's first name is the child's good, not the parents' religious views or need for originality.

2. Right to know one's parents

135. Swiss family law permits a child for whom no one has claimed paternity to initiate filiation proceedings.[102] This is a strictly personal right that the child may exercise only if he or she is capable of forming his or her own views. If that is not the case, action must be taken by a legal representative and a guardian ad litem will be appointed even if the mother has parental authority, in order to avoid any conflict of interest between the child and the parent.[103]

136. The child's right to know his or her biological parents is now expressly recognized in the Federal Constitution, article 119, paragraph 2 (g) of which stipulates that every person shall have access to information on their parentage. Thus, an adopted child theoretically has a right to obtain a birth certificate.

137. Article 27, paragraph 2, of the Federal Act concerning Medically Assisted Procreation of 18 December 1998 (LPMA)[104] provides that "where a child of any age can show a legitimate interest, he or she has the right to obtain all the information on the donor". A child over the age of 18 can automatically obtain information on the donor's identity and physical appearance (para. 1) without having to prove a particular interest.

3. Child's right to be cared for by his or her parents

138. With regard to the child's right to be cared for by his or her parents, the Swiss Civil Code places primary responsibility on parents for the protection and education of their children. At birth, children are subject to the parental authority of their parents if the latter are married,[105] or of their mother if she is not married to the father.[106] No outside authority may intervene unless the child requires protection because his or her development is jeopardized and the father and mother do not rectify matters themselves.

4. Nationality

139. The children of a Swiss father or mother automatically acquire Swiss nationality at birth. Children recognized by a Swiss father acquire Swiss nationality by means of a simplified naturalization process.

140. On acceding to the Convention, Switzerland entered a reservation concerning its nationality legislation, "which does not grant a right to acquire Swiss nationality", as the way in which the former Federal Constitution allocated competence in naturalization matters between the Confederation, the cantons and the communes did not permit the Confederation to stipulate, solely on the basis of federal law, that stateless children could acquire Swiss citizenship. However, since entry into force of the new Constitution, the legal situation has changed in that the Confederation is now responsible for facilitating the naturalization of stateless children (art. 38 (3)). The revision of the legislation on nationality to give effect to this constitutional mandate will make it possible for the situation to be evaluated afresh.[107]

B. Preservation of identity (art. 8)

141. The right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law, without unlawful interference is guaranteed in Switzerland by the Constitution and legislation.

142. Under Swiss law, preservation of identity follows from protection of the inherent rights of the person. At the level of the fundamental rights guaranteed by the Federal Constitution, protection of the inherent rights of the person stems, in particular, from personal freedom (art. 10) and human dignity (art. 7). Moreover, protection of privacy can be inferred from article 13 of the Federal Constitution and article 8 of the European Convention on Human Rights. At the legislative level, identity is also protected by the Civil Code (art. 28 et seq.).

143. The child's name and Swiss nationality are entered in the records kept by the registrar.[108] The child's name is entered in the register of births in the place of birth.[109] Information relevant to Swiss nationality is entered in the family register kept by each commune (district of a canton), which includes all citizens.[110] Registration as a citizen of the commune in the family register thus provides evidence of the child's nationality.

144. Under article 45 of the Civil Code, only a judge can order the correction of an entry, and only in the case of inaccuracies resulting from an obvious oversight or error. In such cases, the correction must be recommended by the supervisory authority. The civil registers are supervised by the cantons, which have to ensure that registry offices are inspected every year; the registry department of the Federal Department of Justice and Police carries out inspections in the cantons.[111] Complaints about administrative acts by the registrar may be submitted to the cantonal supervisory authority within 10 days of learning of the act. This procedure is free of charge.[112] Any person whose legal interests are affected by the administrative act is entitled to challenge it. If strictly personal rights are involved, minors capable of forming their own views may act alone, even without the consent of their legal representative. An ad hoc guardianship ad litem may in that case be established by the tutorship authority.

C. Freedom of expression (art. 13)

1. Principle

145. Freedom of expression is enshrined in article 16 of the Federal Constitution. In international law, it is guaranteed by article 19 of the International Covenant on Civil and Political Rights and by article 10 of the European Convention on Human Rights. It is the right of every person, whether natural or legal, foreign or national, minor or adult. Freedom of expression is the foundation of every democratic State, as to allowing people freely to form their opinions is essential for the full exercise of democracy.[113]

146. This freedom comprises the freedom to form an opinion, the freedom to hold an opinion and the freedom to communicate it to others. The right to form an opinion implies the right to receive, without interference from the State and irrespective of borders, opinions and information and to seek information from sources accessible to everyone.[114] It therefore presupposes the existence of a right to information,[115] as it is obvious that one must be able to obtain information in order to form an opinion.

147. The area protected by freedom of expression covers all the "products" or messages of human thought, including feelings, reflections, opinions, information and so on.[116] All means of communicating messages are protected - speech, writing and artistic form. In this respect, it should be noted that freedom of expression is also the source of other fundamental rights, such as cinematic, artistic and scientific freedom.

148. It is clear that schoolchildren, students and apprentices also enjoy freedom of expression.[117] Teenagers should be introduced to the exercise of fundamental rights at school: schools also have the task of developing independent minds, a critical faculty and the ability to

express oneself, all of which will allow the young person to become more mature. Children who learn at school not to be afraid to express their opinions and suggestions will be well prepared in the future to broach the broader area of political and cultural thinking. School helps to create a climate of mutual respect.

2. Possible restrictions

149. Like all other individual freedoms, freedom of expression may also be subject to restrictions. To be lawful, these restrictions must meet certain requirements: they must have a legal basis, be in the public interest or protect a fundamental right of others, be proportional to the objective sought, and not violate the inviolable core fundamental rights (FC, art. 36).[118]

150. In the case of freedom of expression, it is generally a question of balancing the public interest in the maintenance of order, the public interest in freedom of expression and the private interests of the person involved. Freedom of expression should respect, in particular, the limits laid down by criminal and civil law.[119]

151. In criminal law, restrictions are mostly justified by the need to protect a person's honour, young people and the peace.[120]

152. In civil law, article 28 et seq. of the Civil Code protect persons against unlawful attacks, including in the press: the right to reparation, temporary measures to prevent an attack and the right of reply are covered.

153. Control is generally exercised after the event; film censorship and temporary measures taken by a judge to prevent an imminent and serious attack on personality rights are among the few exceptions to the rule.

154. In addition, the freedom of expression of certain categories of persons (such as civil servants or prisoners) may, because of their particular relationship to the State, be subject to further restrictions or prior vetting. For example, prisoners may exercise their freedom of expression and their right to receive information from generally accessible sources provided that order and security in the prison are not affected.

155. In the present context, it is important to mention the following case, from the canton of St. Gallen in the 1970s.[121] A student had written an article for the school newspaper which was intended to be satirical but which was adjudged to be an attack on freedom of belief and worship.[122] As a result, disciplinary measures were taken against the student. In this case, the Federal Court specified that the freedom of expression of schoolchildren could be limited "insofar as the aims or effective functioning of the school so required", but that students are not bound by the world view and philosophy of the school they attend. They can express different views without fear of punishment as long as they do so by lawful means and their behaviour does not create a disturbance detrimental to the effective functioning or aims of the school. In this case, the Federal Court upheld the student's appeal and ruled that the disciplinary measure was disproportionate and inimical to freedom of the press and speech.

D. Access to appropriate information (art. 17)

156. Switzerland recognizes the important role of the media and ensures that everyone, including children, has access to information and material from various national and international sources. In Switzerland, the right to information stems from the freedom of expression guaranteed by article 16 of the Federal Constitution (see below).

1. Books and electronic media for children and young people

157. Every school in Switzerland has its own library, which is stocked mainly with books for children and teenagers. Moreover, in many classrooms there is a book corner or small library with a selection of books suitable for the age of the children concerned. In every class, in fact, books for children and teenagers are used to introduce certain subjects. Teachers in most cantons can also call on the services of educational centres.

158. Alongside the different cantonal libraries, a vast network of general public libraries has been built up; these libraries are run mostly by communes or associations of communes. The books loaned by the Bibliothèque pour tous ("library for all") allow small libraries to refresh and expand their collections at little expense. Mobile libraries offer an original service, particularly in the canton of Neuchâtel: making regular trips to serve remote places, they offer reading matter for people of all ages.

159. All cantonal study programmes include an introduction to the use of electronic media. Many cantons offer a "media awareness" course as such, especially in the last years of primary school. In the higher grades, an introduction to information technology and electronic media is usually a compulsory subject, and sometimes an optional or additional one. In this respect, it should be pointed out that many cantons make a special effort to use electronic media in basic or in-service teacher training, as well as to build up the necessary infrastructure.

160. By way of example, the canton of Geneva has set up book and multimedia resource centres in every school. As part of its anniversary celebrations, the canton of Aargau connected the schools in 200 out of 232 communes to the Internet. The canton of Basel encourages the use of electronic media in schools through the NIKTA@BAS (new information and communications technology in schools in Basel) project. Generally speaking, it can be said that there is a growing trend for children to have access to the various media (books, pictures, video, computers, the Internet, etc.) in the course of their normal school day.

2. Measures taken to encourage the production and dissemination of children's books and electronic media

161. Measures are regularly taken at both the federal and cantonal levels to encourage the production and dissemination of children's books.

162. The Confederation offers support to organizations working to produce and disseminate literature for children and young people. For this purpose, the Federal Office for Culture makes funding available to promote children's and young people's literature. The aim

of these promotional measures is to nurture and cultivate children's and young people's pleasure in reading and languages. The following apolitical, non-denominational and non-ideological organizations are among those receiving annual financial assistance: Schweizer Jugendbuch-Insititut, Ligue Suisse de littérature pour la jeunesse, Oeuvre suisse des lectures pour la jeunesse and Livres sans frontières Suisse. A total of Sw F 180,000 was paid out in 1985, Sw F 250,000 in 1990, Sw F 289,000 in 1995 and Sw F 285,000 in 1999.

163. The Confederation, in accordance with the Federal Act concerning the Encouragement of Extra-curricular Youth Activities (LAJ),[123] also supports and encourages many national projects and activities, with a view to improving the quality of information aimed at children and young people.[124] In this context, mention should be made of an Internet site set up for young people by young people. All information carriers, whether they are one-off or periodic publications (books, magazines, pamphlets, information packs, video cassettes, etc.), are eligible for support, as are information activities aimed at the general public (through the press, radio and television). In accordance with the legal provisions, support of this kind is given to nationwide projects involving extracurricular activities and the active participation of young people.

164. Moreover, all cantons support, or themselves organize, activities to encourage reading. For example, every year Uri organizes about 10 events to encourage reading; Basel is setting up a "book boat" for various school grades; Lucerne, Bern and Zürich regularly offer schools the chance to present authors' readings; Bern publishes the quarterly magazine Bücherbär, which gives information on new publications; and Solothurn has appointed a cantonal officer in this area and publishes, together with the canton of Aargau, a school periodical containing information on this subject.

165. Most cantons support, on a case-by-case basis, the production and dissemination of books for children and teenagers by contributing to production costs from their cultural budget. Graubünden, for example, particularly encourages the production of books for young people in Romansh and Italian (two minority languages in Switzerland), by subsidizing the associations that promote these two languages.

3. Radio, television and the press

166. The independence of radio and television programme makers and freedom of the press are guaranteed by articles 17 and 93 of the Federal Constitution. The Confederation therefore has no power directly to influence, for example, radio and television programming or articles and reports appearing in the written press. Basically, those responsible for radio and television programmes are not bound by federal, cantonal or communal directives, although they must comply with the legal guidelines drawn up by the Confederation.

167. Programmes for children and young people are a staple ingredient of the programmes on public radio and television stations. Some examples are:

- "Oops": this programme for children and young people was first broadcast in 1998 by the Swiss-German television station SF DRS; it consists of programmes aimed mainly at the 15-25 years age group and is broadcast from Monday to Friday

(from 5 p.m. to 7.30 p.m.). "Oops" aims "to inform by entertaining and to entertain by informing", and allows no depictions of violence or pictures encouraging gender or racial discrimination;

- "Radio 3fach", a local radio station in Lucerne run by young people for young people, has no advertising and began operating in summer 1998;

- Radio 105 Network, a private radio broadcaster in German-speaking Switzerland, is also aimed specifically at a young audience, as is clear from the content of its programmes, and has a concession along precisely those lines. According to the concession (awarded on 16 June 1997), the channel should help young people freely to form their own opinions, provide them with objective information and contribute to their cultural development and entertainment;

- The "SwissHits" private television channel broadcasts a special programme in German-speaking Switzerland. The programme consists largely of musical clips and gives viewers information about various cultural events, particularly in the area of music for young people. This information is varied, takes young people's wishes into account and encourages their cultural development. The Federal Council awarded the concession for this new programme on 24 February 1999;

- The new Swiss-German radio station "Virus" has been broadcasting a special youth programme since autumn 1999. According to the concession awarded on 17 February 1999, the youth programme, which is broadcast by satellite, should take into account the wishes of young people and encourage their cultural development.

4. Protection measures

168. Switzerland has taken many measures in the area of the media to protect children and young people.

169. As far as protection measures in the area of radio and television are concerned, in addition to the indirect protection measures mentioned above (including a check on the content when considering an application for a concession), the Government retains certain means of influence, depending on the nature of the programme, at both the national and the international level.

170. At the national level, article 18 of the Federal Act concerning Radio and Television stipulates that the Federal Council may ban certain advertisements in order to protect young people and the environment. The Ordinance on Radio and Television[125] bans advertisements that exploit children's natural credulity or teenagers' lack of experience, or that take advantage of their fondness for certain things (art. 15 (e)).

171. At the international level, the European Convention on Transfrontier Television[126] sets certain minimum standards for television programmes. According to article 7, paragraph 2, of the Convention, no programme that is likely to impair the physical, mental or moral development

of children or adolescents may be broadcast when, because of the time of transmission and reception, they are likely to watch it. Moreover, article 11, paragraph 3, stipulates that advertisements addressed to or using children must avoid harming their interests and must have regard to their special susceptibilities.[127]

172. With regard to the depiction of violence, article 135 of the Criminal Code makes it generally a punishable offence to produce or supply pictures showing acts of cruelty towards human beings or animals without any defensible cultural or scientific merit. This norm, however, is not a protective measure aimed exclusively at children and young people, as it specifies no age limits.

173. Exposing young people to pornography has been punishable under the Criminal Code since 1 October 1992. Anyone offering, showing or making accessible or available to a person under the age of 16 pornographic writings, audio or visual recordings, pictures or other objects or pornographic performances is punishable under article 197 of the Criminal Code.[128] Children under the age of 16 are protected from any contact with pornography. Criminal law also prevents individuals from being confronted against their wishes with images having a sexual content, including, for example, certain photographs on news-stands or outside cinemas.

5. International cooperation and global learning

174. As mentioned above, Switzerland is very active within the framework of international cooperation, including in the area of information and children, through the Swiss Agency for Development and Cooperation.

175. Switzerland also tackles this issue through the Education and Development Foundation, which is a national foundation supported by the Confederation, the Conference of Cantonal Directors of Education, teachers' associations and private aid agencies. The Foundation has set itself the task of promoting and establishing "global learning" in Swiss schools. Its main themes are human rights, multiculturalism, education for peace, North-South relations and sustainable development. It provides information and advice, lends and sells teaching material and offers basic and continuing training courses. It is aimed at teachers at all levels.

176. Switzerland has also signed the Council of Europe's partial agreement concerning the upkeep of the European Centre for Global Independence and Solidarity (North-South Centre in Lisbon), which pursues the same aims as the Education and Development Foundation.

E. Freedom of thought, conscience and religion (art. 14)

1. Principle

177. Freedom of conscience and belief is enshrined in article 15 of the Federal Constitution. It is also guaranteed in Switzerland by article 18 of the International Covenant on Civil and Political Rights and article 9 of the European Convention on Human Rights. Like every other fundamental freedom, it applies to all natural persons, whether they are foreign nationals or Swiss citizens. In certain circumstances, it can also be claimed by legal persons.

178. Every belief concerning the relationship between a human being and a transcendent reality and which has an ideological dimension is protected, regardless of its nature (even if it is atheistic). Freedom of conscience and belief covers the individual's right to take decisions on religious questions completely independently and without State interference. No one can be forced to join a religious association, receive religious instruction or perform a religious act, or be penalized for religious reasons.

179. The cantons are free to determine their relations with churches, while respecting freedom of conscience and belief. They may designate one or more churches as "official churches" and may, for example, take it upon themselves to pay the ministers. The Constitution also protects the right to change religion.[129]

180. Religious freedom also applies in marital relationships.[130]

181. As far as children are concerned, article 303 of the Civil Code stipulates that the holder of parental authority or guardianship determines (subject to the principle that no one may be forced to take a religion) the religious education of his or her children (or wards) up to the age of 16, at which point children may freely choose their religion.

182. The religious neutrality of State schools is another result of the general guarantee of freedom of conscience and belief. Thus, education in State schools,[131] which is compulsory and free, must be neutral from a religious viewpoint. Indeed, religious neutrality is particularly important in State schools, as education is compulsory for all, with no distinction as to religion. The aim of this provision is to ensure respect for the feelings of individuals with different beliefs, to strengthen the right attributed to parents in article 303 of the Civil Code and to protect children from any pressure when they come to choose a religion upon reaching the age of 16.[132]

183. The principle of religious neutrality applies to State schools at all levels. All pupils must be able to follow the courses provided by these schools, without prejudice to their freedom of belief and conscience. The teaching must make no distinction between religions, offend any religious belief or impose any religious behaviour. Any educational content, method or organization that has a religious bias or is antagonistic towards religious beliefs would be unconstitutional.[133] Consequently, any denigration of particular religions or religious beliefs, either in the way schools are organized, in what the teacher says or in school books, would violate freedom of conscience and belief, whether the violation is deliberate or not.

184. That is not to say that the teaching should be non-religious or shorn of all reference to religion, but freedom of conscience and belief implies that religious instruction should be a separate, optional subject. It is only if students are forced to have religious instruction that their freedom of conscience and belief is violated. In recent times, some cantons have introduced compulsory, non-denominational religious lessons for all pupils. The lessons are organized in such a way that children of different religions can follow them without their freedom of religion being infringed.

2. Examples from Federal Court case law

185. The Federal Court handed down a decision in 1993 in the case of a pupil who had been excused from biblical history lessons at the request of his parents. The school headmaster decided that the pupil could do other work in the classroom during those lessons. The pupil's parents tried unsuccessfully to have him moved to another room during those particular lessons, but their appeal to the competent cantonal department of education was dismissed on the grounds that biblical history did not constitute religious education within the meaning of article 49 of the Federal Constitution. The Federal Court, however, held that biblical history lessons did indeed constitute religious education, as their subject was the relationship between humans and a divinity. According to the Federal Court, even a non-denominational or interdenominational lesson in this area constitutes religious education.

186. The Federal Court has been quite strict in its application of the principle of religious neutrality. It recently rejected an appeal by a woman teacher in Geneva who had been ordered by the cantonal authorities not to wear a Muslim headscarf during lessons.[134] The Federal Court stressed that keeping the religious peace took precedence over an individual's right to wear a religious symbol and that the order not to wear the Muslim headscarf also protected the rights of pupils and parents. The judges stressed the particular importance of religious neutrality in primary school, given the great susceptibility of young children. It should be added that the teacher subsequently appealed to the European Court of Human Rights.

187. With this judgement, the Federal Court reaffirmed its position on religious freedom. In 1990 it had banned the hanging of a crucifix in a classroom, on the grounds that it went against the principle of religious neutrality in school.[135] The Court found that the State, as the guarantor of the religious neutrality written into the Constitution, should avoid being identified with a minority or majority religion by ignoring different beliefs. According to the Court, the sight of a religious symbol in a classroom might offend the religious beliefs of a person not belonging to that religion.

3. Lawfulness of restrictions on freedom of conscience and belief

188. Pursuant to article 36 of the Federal Constitution, any restriction on a fundamental right must have a legal basis, be in the public interest (public order, public safety, public health or morality) or protect a fundamental right of others and be proportional to the objective sought.

4. Religious minorities: Federal Court case law

189. Freedom of conscience and belief also covers the rights of religious minorities.[136] As pointed out by the Federal Court, it is above all through tolerance that freedom of conscience and belief can be guaranteed at school.[137] Below are a few examples of decisions by the Federal Court on the lawfulness of restrictions on this freedom, which also address the problem of minorities' freedom of conscience and belief.

(a) In its decision 114 Ia (1988) 129, the Federal Court upheld an appeal concerning the violation of the freedom of conscience, belief and worship of a member of the Worldwide Church of God, who had asked that his daughter be excused from school for five days during the

Feast of Tabernacles. The competent school authorities had authorized only four days' absence, drawing an analogy between the feast days observed by members of this church and those observed by Jews. The Federal Court held that, even if the disruption to the child's education might be considerable if the absence lasted for several consecutive days, it was difficult to argue that the disruption would be significantly worse for an absence of five or six days rather than four. Moreover, permission to be absent from school for four days was of no use to the appellant, who needed one more day if he was to comply with the precepts of his religion, which required him to celebrate the Feast of Tabernacles for eight days with the community (usually abroad). According to the Federal Court, if the absences authorized annually for the members of a religious community do not exceed those granted by the canton of Zürich to followers of the Jewish religion, who benefit most in this respect, the principle of proportionality would be undermined by refusing to authorize a five-day absence from school on the grounds that Jewish children never need to seek authorization for more than four days running. For the appellant, the decision to authorize an absence of four, rather than five, days made a big difference and was a serious attack on his freedom of belief, conscience and worship. Moreover, from an educational point of view, any inconvenience caused by the authorization of an extra day did not seem significant. In the light of the foregoing, the Federal Court ruled that the refusal to grant the authorization requested caused disproportionate damage; the decision that violated the freedom of belief, conscience and worship was therefore overturned.

In the case dealt with in Federal Court decision 119 Ia (1993) 178-195, a Muslim had requested, on religious grounds, that his daughter be excused from compulsory swimming lessons at primary school. After all the authorities in the canton of Zürich rejected this request, the Federal Court upheld the father's appeal, stating that it was incompatible with freedom of conscience and belief to force a little girl to take part in a compulsory swimming lesson, which would mean she had to appear in a swimming costume in front of other people. The Court affirmed that the prohibition observed by orthodox Muslims on mixed-sex swimming came within the area of religious freedom protected under article 15 of the Federal Constitution and article 9 of the European Convention on Human Rights. The following excerpt from the decision is particularly interesting: "The constitutional guarantee of religious freedom does not only protect the religions of Western Christian churches or communities; protection extends to all religions, irrespective of the number of followers in Switzerland. The Muslim religion is therefore protected."

(b) Another case concerns a young girl banned by a school board from wearing a Muslim headscarf in a non-fee-paying primary school. The competent cantonal department had upheld the appeal by the girl's father, basing its decision on the position taken by the Conference of Directors of Education of the French-speaking cantons and Ticino, which had authorized, in 1996, the wearing of traditional religious objects (such as crosses, skull caps or headscarves). The Administrative Court of the canton of Neuchâtel rejected the appeal by the school board against the Department's decision, noting that the secular duty of State schools did not mean it was the school's task to prevent contact between different religious beliefs. In the case in point, according to the Court, the school board's decision might lead to serious conflict between the pupil concerned and the school, and also between the pupil and her family. The Court therefore believed that the pupil's education might have been compromised by the board's decision and authorized the girl to wear her headscarf at school.

190. In conclusion, it can be stated that exemptions relating to absences, the practice of sports, clothes and other matters are granted very easily, even systematically.[138] It should be noted that care is also taken to ensure that the children concerned do not have a gap in their education as a result of being excused from a lesson. Some cantons have issued guidelines and recommendations in this respect for local education authorities.[139]

F. Freedom of association and peaceful assembly (art. 15)

1. Freedom of association

191. In Switzerland, freedom of association is guaranteed both by the Federal Constitution (art. 23) and by international law, in article 22 of the International Covenant on Civil and Political Rights and article 11 of the European Convention on Human Rights. Freedom of association includes the right freely to establish (or disband) associations, to join and be a member of one and to take part in the association's activities.

192. This right applies to every person. Children also have this freedom, whether they are of Swiss nationality or not.

193. Freedom of association may be subject to restrictions provided that the latter respect the principles of legality, public interest and proportionality (FC, art. 36), freedom of association is therefore liable to be restricted if it represents a really serious, clear and present danger.

194. In Switzerland there are a great many organizations for children and young people in which young people themselves are directly involved. One organization that should be mentioned in particular is the Swiss Council of Youth Activities, an umbrella organization of youth organizations in Switzerland, founded in 1931. Members of the Council come from very diverse associations, such as religious or political peace organizations, youth parties, trade unions and occupational associations for young people, schoolchildren and students, and student associations, the scout movement, environmental associations, youth exchange organizations, youth centres, etc.

2. Freedom of peaceful assembly

195. Freedom of assembly is enshrined in article 22 of the Federal Constitution. It is also guaranteed in Switzerland by article 21 of the International Covenant on Civil and Political Rights and by article 11 of the European Convention on Human Rights. The right to freedom of assembly is a vital part of the Swiss democratic system.

196. Every natural person, including every child, has the right to freedom of assembly, whether or not they are of Swiss nationality.

197. Every person therefore has the right to meet with other people to pursue or reach a common goal, exchange views or communicate their views to third parties. Freedom of assembly not only protects political meetings but also friendly scientific, artistic, sporting and leisure gatherings, the kind of gathering that usually concerns children.

G. Protection of privacy (art. 16)

1. Principle

198. Article 13 of the Federal Constitution provides for protection of privacy. Article 10, moreover, which guarantees personal liberty, also provides protection against illegal attacks on a person's honour and reputation. At the international level, Switzerland is bound by article 8 of the European Convention on Human Rights and by article 17 of the International Covenant on Civil and Political Rights, which provide guarantees for privacy, family, home, correspondence and reputation.

199. Under Swiss law, the basic right to privacy gives everyone the right to organize his or her life and have relationships with other people without being prevented from doing so by the State; respect for intimacy is thus also included.

200. The Federal Court applies mainly the principles contained in article 8, paragraph 2, of the European Convention on Human Rights, according to which there can be no interference in the exercise of the right to respect for private life "except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others".[140] These principles also guide Swiss legislation in the areas requiring State intervention where that intervention has to be limited to the strict minimum required for the purposes of the legislation.

201. Broadly speaking, the protection of children against infringements of their privacy may clash with the rights of parents, especially when the latter are the holders of parental authority. Individual circumstances will determine whether the right of parents to educate their children or the protection of children's privacy should take precedence, and this applies to all areas of private life, such as the monitoring of personal relationships with third parties. In any case, the best interests of the child will be the deciding factor, with the child's opinion being given greater weight if he or she is already able to form his or her own views.[141]

202. In relationships between individuals, the rules under civil law on the protection of personality rights and those under criminal law on the protection of honour and secrecy, especially medical secrecy, introduce the restrictions on the freedom of others that are necessary to ensure respect for the life of others.

2. Legal remedies

203. If the attack on personality rights is carried out by private individuals, the provisions of article 28 et seq. of the Swiss Civil Code permit the victim to take legal action. The victim of an unlawful attack may request that the judge prevent it if it is imminent, put a stop to it if it continues, or declare it unlawful if the problem persists. These rights relating to the protection of the person are strictly personal rights, which a child capable of forming his or her own views may invoke before the courts even without the assent of his or her legal representative.[142]

204. Although under the current Criminal Code the injured party may file a complaint only if he or she is over the age of 18 and capable of forming his or her own views, this situation is likely to change when the Swiss Criminal Code is revised, as it is envisaged that minors capable of forming their own views will be able in future to file a complaint (revised Criminal Code, article 30).

3. Protection of the child's correspondence and privacy

205. At the legislative level, the child's correspondence is protected by, in particular, article 179 of the Criminal Code, which punishes any unauthorized person who opens a sealed envelope or parcel to find out what it contains. Listening in on and recording private conversations and violating secrecy or privacy using a camera are punishable under article 179 bis et seq. of the Criminal Code.

4. Protection of the child's personal data

206. The Federal Act concerning Data Protection of 19 June 1992[143] contains principles applicable to both the public administration and to individuals and protects the inherent rights of the person and the fundamental rights of the natural and legal persons on whom data are collected. Its provisions can be invoked by any person suffering an attack on his or her personality rights, including children.

207. The Act applies to all processing of personal data carried out by federal agencies or private individuals (natural or legal persons). It defines the general principles applicable to data processing: lawfulness of collection, good faith, proportionality, purpose of the processing, data accuracy, guarantee of personality rights and data security.

208. The Act establishes a federal data protection officer, to monitor the implementation of the Act by federal bodies and to advise private individuals. Appeals against the decisions of federal and cantonal data protection bodies should be submitted to the Federal Commission for Data Protection. If the controller of the file is a private individual, legal remedies are at the level of private proceedings. However, the decision at the highest level of appeal in the canton can also be challenged before the Federal Commission for Data Protection.

209. At the international level, it can be mentioned that Switzerland is a party to the Council of Europe's 1981 Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.[144]

210. In the area of data registration for criminal offences, children between the ages of 7 and 15 enjoy absolute protection, as any measures or punishments they may be subjected to are not entered on a police record, by virtue of article 12 of the Ordinance on Computerized Criminal Records.[145] Article 369 of the draft Criminal Code and the draft federal bill governing the criminal status of minors provide for the recording of only the most serious penalties: for minors under the age of 15, only sentences involving placement in a custodial institution will be recorded (draft federal bill, art. 14 (2)); for minors over the age of 15, only those involving deprivation of liberty (draft federal bill, art. 24) or the above-mentioned placement will be recorded.

211. With regard to children in care, whether they have been placed with foster parents or in institutions, article 22 of the Ordinance regulating the Placement of Children stipulates that "all persons appointed to supervise children in care must respect confidentiality with regard to third parties".[146]

H. The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment (art. 37 (a))

212. Article 10 of the Federal Constitution stipulates that torture and any other cruel, inhuman or degrading treatment or punishment are prohibited. Switzerland is also required to abide by the international guarantees pertaining thereto, including those contained in the following instruments: the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984,[147] the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 26 November 1987,[148] the International Covenant on Civil and Political Rights (art. 7) and the European Convention on Human Rights (art. 3).

213. Switzerland considers the prohibition of torture and any other inhuman or degrading treatment to be a fundamental principle of public international law which should be respected by every authority as a rule of jus cogens.[149] Thus, prosecution and punishment are based on the specific provisions of criminal law, including the articles on homicide,[150] physical injury,[151] endangering the life or health of others[152] and attacks on liberty (threats, coercion, illegal detention and kidnapping).[153]

214. Detention conditions in Switzerland are subject to various international monitoring mechanisms - State party reports and the communications procedure of the United Nations Committee against Torture on the one hand, and, on the other, visits to Swiss prisons by members of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. It should be stressed that Switzerland has been pressing for many years at the international level for the addition of an optional protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to establish a visiting procedure in national penal institutions.

215. Although there have been reports of isolated cases where the police have infringed the law in their treatment of individuals, including some foreigners, during arrest and detention, there have never been any such reports concerning children or young people.

V. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

A. Parental guidance (art. 5)[154]

1. Reservation

216. Switzerland respects the responsibility, the right and the duty of parents or, where applicable, the members of the extended family, guardians or other persons legally responsible for children, to give them the guidance and counsel suited to the exercise of their rights as recognized by the Convention, in a form consonant with the development of their capabilities.

217. Swiss law gives parents both the right and the primary responsibility of directing the child's education, and seeks at the same time to take account of children's right to respect for their developing personality. It is the parents' responsibility to determine the care and the education to be given children "for their good" and to take the necessary decisions "subject to their capacity" (CC, art. 301). Children owe obedience to their parents, who must, however, grant them "freedom to organize their life according to their degree of maturity" and take account of "their opinion as far as possible" in matters of importance. Under article 302 of the Civil Code, parents must bring up children according to their possibilities, and promote and protect their physical, intellectual and moral development. They are responsible for an appropriate education and may determine the religious education the child receives until he or she reaches the age of 16.[155] They are, moreover, required to cooperate with the school and with the "public and charitable institutions for the protection of young people".[156]

218. Switzerland's reservation to the effect that Swiss legislation concerning parental authority remains reserved was not entered because the Swiss legal system is incompatible with the Convention; rather it was formulated because the Convention does not give a precise definition of the right of parents. The Swiss Government would, however, be prepared to consider withdrawing this reservation on the basis of the Committee's comments and possible recommendations on this point.[157] At the internal level it will be for Parliament to take a decision on the withdrawal of this reservation.

2. Information on family structures in society

219. In the Swiss legal system, the "family" is a flexible concept which covers different situations depending on the area considered (e.g. private law, tax law, registration of foreigners or social legislation). In all areas, it is primarily the purpose of the legislation which determines who has rights and obligations and, in particular, the relations which should be considered as constituting a "family". In Switzerland, the "family" can however generally be defined as: "a social group of a particular kind, based on relationships between parents and children, and recognized as such by society, that is, accepted as an institution".[158]

220. Thus, the main characteristic of the family is the presence of children. This definition enables all forms of family to be taken into consideration, including families comprising a mother or father bringing up their children alone, or families where the children live away from home for educational reasons. However, it is not restrictive or legally binding.

221. Mention may also be made here of the case law of the European Court of Human Rights relating to the concept of "family life", (adopted by the Federal Court), whereby protected links extend to relations "playing a determining role in the family". This principle, which can be interpreted very loosely, makes it possible to take account of the hypotheses and particular needs of each sphere of application of the law.

222. According to the 1990 census,[159] there were 1,399,011 children under the age of 18 at that time, 87.9 per cent of whom lived in a two-parent household comprising one or more children; 7.3 per cent of children lived in a single-parent household and 2.2 per cent lived with an unmarried couple. Only 1.7 per cent of children under the age of 18 lived in a collective household (children's institution, etc.).

223. The number of minors whose parents are divorced has increased steadily over the last 50 years; there were 3,991 in 1950, 4,941 in 1960, 6,985 in 1970, 11,356 in 1980, 11,396 in 1990 and 13,642 in 1997, when custody was awarded to the mother in 12,228 cases, to the father in 1,316 cases, and conditionally to the father (possibility of award to a third party) in 38 cases.

224. The low proportion of births out of wedlock is one of the characteristics of Swiss demographic patterns. In 1997, only 8 live births in every 100 occurred out of wedlock. In the course of the century, births out of wedlock initially decreased among very young women; more recently, a sharp increase has been observed after the age of 25. In 1997, unmarried women giving birth represented a group whose characteristics were different from those of married women, in terms of place, nationality, residence or religion. The largest number of births out of wedlock was to be found among women of African nationality (about 17 per cent of births compared with 8.9 per cent among women of Swiss nationality). However, the proportion of unmarried women among those giving birth in 1997 was low among Europeans (5.8 per cent), Asians (5.3 per cent) and Americans (6.8 per cent). This proportion was higher among Protestant (9.0 per cent) than among Catholic women (7.2 per cent). It was 15.6 per cent among women with no declared religion, compared with 1.9 per cent of Jewish women. The proportion of births out of wedlock was highest (12.5 per cent) in Basel-Stadt and lowest in Appenzell-Innerrhoden (2.6 per cent).

B. Parental responsibilities (art. 18 (1) and (2))

1. Responsibility of parents

225. In Swiss law, parental responsibility is delimited by the concept of parental authority, which is the legal power of the parents to take the necessary decisions for their minor children. Parental authority is the legal basis for the education and representation of children, and the administration of their property by the father and mother. Parental authority is exclusively directed at the interests of the child.[160] Under article 301, paragraph 1, of the Civil Code, parents determine the care to be given to the children, direct their upbringing with a view to their best interests and take the necessary decisions, subject to their capacity. They are required to bring up the children according to their possibilities and means, and have the duty to foster and protect their physical, intellectual and moral development (CC, art. 302 (1)). The parents must provide for the children's upkeep, and consequently for the cost of their education and training and measures for their protection (CC, art. 276).[161] Persons who violate their duty to assist or educate a minor whose physical or mental development they have thus endangered, or who have failed in this duty, are punishable in accordance with article 219 of the Criminal Code. In 1996, 16 persons were sentenced under this provision.

226. During marriage, parents exercise joint parental authority.[162]

227. As regards divorced parents, article 133, paragraph 3, of the Civil Code grants them the possibility of applying to the judge for maintenance of joint parental authority. The law imposes several conditions: the parents must submit for approval an agreement determining their share in the care of the child and the apportionment of the costs of his or her upkeep, and must apply to

the judge together. The judge may only order the measure if it is compatible with the child's well-being. The child's best interests thus remain the determining factor in the decision on parental authority.

228. Unmarried parents may apply to the tutorship authority for the award of joint parental authority, without distinction as to whether the parents live together or not. The determining factor should not be the fact that they are living together, but the joint willingness of the parents to assume full responsibility for the child as long as this is compatible with the child's well-being. In their application, the parents must submit for approval by the tutorship authority an agreement determining their participation in the care of the child and the apportionment of the costs of the child's upkeep. The tutorship authority awards parental authority to both parents "provided this is compatible with the child's well-being". The child's interests therefore remain the crucial factor in the authority's decision. The award of parental authority must also be modified "when important new developments so require for the well-being of the child".[163]

2. State aid and assistance to parents

(a) Family guidance and parent training services

229. There are numerous State or private services and institutions available to parents in Switzerland, and in particular locally, for any matter concerning the child's education or development. As a general rule, the institutions are maintained by public funds.

230. The State offers and finances certain programmes. All services provided in the cantonal pregnancy consultation centres, cantonal or communal offices for equality between women and men, cantonal or communal offices for the protection of young people and other public services, are financed by the State. Private organizations also offer programmes. In some cases, they receive public subsidies, even when they have their own resources: their programmes are therefore financed on a joint basis.

231. Under the Federal Act concerning Pregnancy Consultation Centres of 9 October 1981,[164] the cantons introduced family planning and consultation offices which offer free consultations. All cantons have programmes for future parents concerning preparation for the birth and the new tasks involved in the care of an infant, so that they will be in the best position to face their new responsibilities. Schools for parents and adult training centres offer a host of courses specifically concerning the various aspects of child development and schooling. The objectives of these courses are all initially to help parents to avoid crisis situations, and subsequently to help them manage such situations should a crisis arise.

232. Article 171 of the Civil Code requires the cantons to make available to couples an office for consultation on any difficulty encountered in their life together or their parental tasks.

233. The schools provide for regular meetings between parents and teachers, so as to inform parents about the education provided and their child's progress or any difficulties he or she may have.

234. All the cantons offer a variety of services in support of the educational efforts of parents. A large number of State services are readily accessible and provide specialists who are in a position, where necessary, to accompany, support and advise parents: child psychology services, psychiatric assessments for young people, social services, vocational guidance and advice services, remedial teaching, advice from the social services, and many more. Many of these services are not only available to parents, but also to educational institutions in order to help them solve educational problems.

235. Possibilities of assistance and advice are also offered by the communes or associations of communes.

236. A large number of private associations and initiatives complement this assistance offered to interested parents. Examples are Pro Juventute's letter to parents, associations of parents of schoolchildren, associations for parent training, marriage counselling and parental advice services, religious associations and services and counselling services for young families. These private entities often have support from the State.

237. The highly populated cantons with urban centres[165] have a very dense and varied network of counselling services. The smaller cantons often join with a central canton in order to be able to offer certain services. In eastern Switzerland, for example, the psychiatric service for children and young people in St. Gallen is available to the cantons of St. Gallen, Appenzell-Innerrhoden and Aargau. Another example is the agreement signed between the canton of Nidwalden and the psychiatric service for children and young people of Lucerne. When the need arises many cantons also create decentralized units so that the rural population can have the same opportunities as those in the urban centres; examples are the Bern regional educational advice services, the regional centres of the Cantonal Office for Juveniles in Valais, the Zürich district and town secretariats, the Fribourg regional social services, etc.

(b) Measures, structures and actions for very small children

238. The advisory services for parents of young children are the product of both State[166] and private [167] initiatives. The availability of follow-up services for small children varies from one canton to another. Some cantons offer a very broad range, while others are in the midst of developing such services.[168]

239. The form the counselling and assistance services take and the responsibilities they assume vary widely. The services offered to young parents and their children comprise opportunities for contacts and meetings, information, counselling and follow-up provided by specialists (social workers, educationalists).[169]

(c) Information for parents

240. In the cantons and certain towns, offices for the protection of young people or offices for juveniles publish information bulletins they send regularly to parents on the subject of child development, both physical and psychological. The bulletins also contain the addresses of counselling services and parents' associations. Certain public services directly finance the

publication of information. The cantonal offices for equality between women and men, cantonal offices for the protection of young people and juveniles offices in many cantons publish files or lists of useful addresses for parents on such subjects as schooling, health, leisure or the different services offering help with problems. The publication of information is also financed by private entities (the Pro Juventute foundation's letters to parents, for example), some of which also receive public subsidies.

(d) Maternity insurance

241. Article 116 of the Federal Constitution stipulates that the Confederation shall institute a maternity insurance. The State's desire to assist parents in their tasks and in particular to support mothers led to the adoption by Parliament on 18 December 1998 of the Federal Act on maternity insurance, which provides for the payment of an allowance for 14 weeks to offset loss of earnings for all women doing paid work (salaried and independent), equal to 80 per cent of the salary (up to a certain ceiling). In addition, a single basic benefit is provided for all women (whether working or not) in straitened circumstances. A referendum was requested on the Act. It was thus put to the people in a popular ballot on 13 June 1999 and was rejected. Parliament, aware of the importance of such insurance, has already undertaken the necessary work to enable it to submit a new bill on the subject, taking account of the criticisms made at the time of the popular ballot.

3. Single-parent families

242. Special assistance for single-parent families is provided for in various pieces of legislation.

243. The Swiss Civil Code contains measures in cases of default by a debtor parent, that is when the parent who has custody does not receive child maintenance payments.[170] The law's application having been delegated to the cantons, the systems and the amounts allocated vary considerably from canton to canton. It should be noted that all the cantons have set up a service for the recovery of maintenance allowances and advances. The parent who has custody can turn to that service if contributions are not paid. The debtor parent can also apply to it in the case of temporary liquidity problems.

244. In most cantons the payment of a child allowance depends on the recipient's being gainfully employed. Parents who raise their children on their own and do part-time paid work would thus in fact only be entitled to a partial child allowance. To compensate for that situation, the cantons ensure that full allowance payments are made to parents raising their children on their own, if those parents do only part-time work because of their family obligations.

245. The new Federal Act concerning Sickness Insurance (LAMal) of 18 March 1994[171] has made health-care and pharmaceutical-products insurance compulsory for all those domiciled in Switzerland. The premiums are always individual and are not income-linked, but LAMal has set up a system financed by the authorities to reduce premiums for persons in straitened circumstances. Single-parent families in a critical situation can benefit from this.

246. Several cantons have instituted need-related benefits that are subject to income conditions and paid out especially to parents who are raising their children on their own. Such benefits are usually related to maternity and are paid for a period varying from six months to three years after the birth, depending on the canton. Cantons that have set conditions for granting benefits usually require that the mother (or the father, as the case may be) take care of the child herself for at least 50 per cent of her time when the rest is devoted to paid work.

247. Some centres for single-parent families in difficulty have been set up as a result of private initiatives (often by cantonal or local single-parent associations) or by churches, which sometimes receive public subsidies and offer housing and childcare services.

248. Institutions for women in distress are also sometimes very helpful. Such a temporary refuge allows wives separated from their husbands, often for reasons of violence, to find their feet again. The children are usually taken care of during the week if the mothers go out to work.

4. Families in poverty

249. The Federal Constitution (art. 115) and the Federal Act concerning Competence in Matters of Assistance to Persons in Need[172] define the cantons' areas of competence in this regard. The State has the duty to give needy persons appropriate assistance to assure their livelihood. Each canton has therefore set up a social aid service where social workers take charge of cases of persons needing help. In most cantons the assistance has to be reimbursed on certain conditions and up to a certain amount. It is available to any person in need. It is not specifically geared to parents, but they can of course take advantage of it.

250. Dependants are taken into account in the calculation of social insurance benefits (child allowances, higher unemployment benefits, family allowances, in particular).

251. Need-related benefits paid to parents in certain cantons can be of help when their circumstances are insecure.

252. Many charitable organizations and associations also play an important part where poverty is concerned. Many of them receive State support. These organizations can provide not only financial assistance but also more personal support to parents in need. They can for example offer training courses in areas where the parents are wanting, leisure activities to occupy the children and family activities. They can sometimes act as a link between families in need and the public social aid institutions. These organizations are not all active at the national level or gathered under a national umbrella organization, hence it is difficult to make an exhaustive list of them. Fourth World family associations generally staff offices and offer training programmes, social support and family activities.

5. Foreign families and refugees

253. Foreign parents enjoy the same benefits as other parents for the discharge of their duties. Problems arise specific to their situation as migrants and special benefits are offered them.

254. The specific support given parents of foreign nationality forms part of the policy of the integration of foreigners in Switzerland. The Swiss authorities have advocated an active policy of integration for the foreign resident population and various federal, cantonal and communal bodies concern themselves with the question.

255. At the cantonal level, several entities and individuals work to promote the integration of foreigners in Switzerland. There are nearly 40 cantonal, regional or local services to assist foreigners; these are both public and private organizations and institutions, providing meeting places, counselling, information and coordination. The services offered by these bodies are also geared to parents: continuing education and language classes, individual counselling, etc. They often work in cooperation with the cantonal and local authorities, with churches, with unions and management or with foreign groups. Those partners are also their main source of funding.

256. The integration of persons with recognized refugee status is the responsibility of mutual aid organizations. However, the Federal Office for Refugees is committed to giving financial support to appropriate integration projects, for example language and literacy classes or parent training projects. The Confederation alone has competence until the resident permit is issued, at which point the cantons take over.[173]

257. According to a survey carried out by the Federal Bureau for Equality between Women and Men among institutions and charities working on asylum, 85 per cent of those questioned said that refugee women had difficulty in raising their children. Foreign women professionals believed this was because such mothers, no longer having the support of their families and neighbours and unable to find places in crèches or day nurseries, find life in Switzerland to be unremitting. It seems that they also have difficulty adapting to their new environment, for example understanding the Swiss school system.

258. Meeting points for refugee women, funded nowadays by donations or by the Confederation, are excellent places to exchange information, where mothers can find support in raising their children. Sometimes such centres offer language classes and have a day nursery as well. The Swiss Red Cross organizes meeting places and support groups for women and children.

259. Thus Switzerland is striving to develop and provide further support facilities where day nurseries and activities for parents can be found under the same roof.

6. Schooling

260. Schooling is the responsibility of the cantons, which have taken measures to respond to the needs engendered by the presence of foreign children in the schools.[174] Teachers in particular receive special training in certain cases for addressing the needs of children and parents from foreign countries. The training of future teachers includes a component on how to deal with foreign children's problems in school. In addition, each canton has in its department of education an assistant responsible for questions relating to intercultural teaching (counselling, refresher training for teachers, advisory service on school issues for foreign parents).

261. The Federal Commission on Foreigners has demonstrated the fact that foreign children's success in school is closely linked to the degree of integration of the parents - how broad their contacts are with Swiss people, how happy they are to live in Switzerland - as well as to their knowledge of the language and of the school and vocational training system in Switzerland. Switzerland has taken this observation into account in its active policy of integrating foreigners.

262. Cantonal foreigners' aid services, organizations (the Swiss Red Cross for example) and trade unions regularly publish information on given themes in their newsletters or bulletins and print information leaflets on different subjects, such as facilities for children, the school system, etc.

C. Separation from parents (art. 9)

1. Separation from parents

263. In Switzerland an authority cannot intervene in the relationship of a child with its parents unless the child's welfare is threatened[175] and the danger cannot be avoided in any other way. Thus the separation of a child from its parents is only possible in the form of a child protection measure. The legal protection of the child includes, as the most incisive protective measure, withdrawal of parental custody or parental authority.[176] The authorities must intervene motu proprio the moment they learn of the danger to the child. The tutorship bodies, as well as the administrative authorities, the courts, the organs of criminal justice and the persons appointed by cantonal law, such as teachers, police agents, doctors and social workers, must report cases that deserve attention. Pursuant to article 317 of the Civil Code, the cantons must ensure effective cooperation from the authorities and services entrusted with civil law measures for the protection of children, criminal law measures for juveniles and other forms of assistance to young people.

264. Withdrawal of custody on the basis of article 310 of the Civil Code, can be ordered by the tutorship authority only if it is not otherwise possible to prevent the child's development being compromised.[177] The tutorship authority may also withdraw custody from the parents at their request or that of the child, when relations between them have so seriously deteriorated that it has become unbearable for the child to remain in the family nucleus and that, as far as can be foreseen, other measures would be ineffective. This rule concerns all cases where the parent-child relations are disturbed to the point where they render any harmonious upbringing of the child impossible and constitute a danger for his or her development. The loss of custody is decreed by the tutorship authority, the authority of the first instance, whose decision may be appealed against to a cantonal judicial authority and, in the final instance, to the Federal Court.

265. Withdrawal of parental authority, on the basis of article 311 of the Civil Code presupposes that the father and mother are no longer capable of exercising parental authority properly because of inexperience, illness, infirmity, absence or other similar reasons.[178] The parents' incapacity may also derive from their conduct, if they have not shown any real concern for the child or have been gravely remiss in their duties to the child. Withdrawal of parental authority is decreed by the tutorship authority, an authority of second instance. If that authority is not a judicial one, judicial control is nevertheless guaranteed.[179] The decision to withdraw parental authority is moreover subject to judicial review by the Federal Court.

266. In cases of dissolution of the marriage, article 176 of the Civil Code refers to the general provisions on the effects of filiation. If there is judicial separation, custody is exercised by one of the parents, but parental authority may continue to be exercised by both.[180]

267. Pursuant to the provisions concerning the dissolution of the marriage and proceedings for divorce, the civil judge decides on the granting of custody and parental authority.[181] These decisions are subject to the relevant remedies at the federal level.

2. Possibility of participating in separation proceedings

268. Article 310 of the Civil Code governs the separation of the child from his or her family within the framework of measures to protect the child. The relevant proceedings are regulated by the cantons, with the exception of some rules of federal law.[182] As a result, the practice of the tutorship authorities differs considerably from canton to canton, especially with regard to the child's being heard. In all cases children are heard if they are old enough. In custody withdrawal proceedings, a child capable of forming his or her own views has, pursuant to federal law,[183] the right to request measures and therefore to be heard. Moreover, according to article 420 of the Civil Code, anyone who can prove an interest - that is, the parents, but also children capable of forming their own views and any other person close to them - may appeal against the decision of the tutorship authorities.

269. Civil law also provides for children to be represented in the proceedings for their parents' divorce or separation.[184] When there are sound reasons for doing so, the judge may order the child to be represented in the proceedings by a guardian.[185] Judges must, in particular, consider whether a guardianship should be set up when the father and mother submit divergent views regarding parental authority or important questions concerning their personal relations with the child, when a hearing of the father and mother or the child, or other factors, casts serious doubt on the validity of the views of the father and mother about the attribution of parental rights or the way in which their personal relations are regulated or when they justify examination of the need to order protection measures for the child.[186] Judges must, however, order a guardianship if a child capable of forming his or her own views so requests.[187] Within the context of his or her powers with regard to the granting of parental authority, to essential questions concerning personal relations and to child protection measures, guardians exercise for the child the same rights, linked to their status as a party, as the parents. Thus they can submit views and lodge appeals.[188] Legal costs and charges may not be chargeable to the child.[189] Furthermore, children must be heard in proceedings concerning their protection, personal relations and access rights, unless their age or other important factors make the hearing inadvisable.

3. Right to regular personal contacts

270. The right of access is conceived expressly as a right of the child and not merely the right of the parent who does not hold parental authority. In order to take account of article 9, paragraph 3 of the Convention, the Swiss Government proposed, during the recent revision of the Civil Code, that a reciprocal right of access should be introduced for the child and whichever parent does not have custody. This is both a right and a duty: the parent and the child owe one

another assistance, consideration and respect,[190] which implies that the parents have an obligation to exercise that right. As a counterpart to this right and duty of the parents, children have a right to maintain personal relations with their father and mother. Thus, article 273 of the Civil Code provides that the parent who does not have parental authority or custody and the minor child have the reciprocal right to maintain such personal relations as are dictated by the circumstances. The right of the child to maintain personal relations must be understood as a strictly personal right. However, the tutorship authority may remind the father and the mother, the foster parents or the child of their duties and give them instructions, when the maintenance or absence of personal relations is prejudicial to the child.[191] Here also the children's interests take precedence when their right to maintain personal relations is limited for their own protection. Arrangements for right of access are in principle left to the persons concerned.

271. As a necessary complement to the right to maintain personal relations, civil law provides for the right of the parent who does not have parental authority to receive information concerning any special events occurring in the life of the child and to be heard before any decisions of importance for the child's development are taken.[192] According to article 275a, paragraph 2 of the Civil Code, the parent who does not hold parental authority may seek information directly from third parties caring for the child (doctors, teachers, apprentice masters). It goes without saying that those third parties must then respect the child's personality rights. The child's welfare may, depending on circumstances, require that the right to information should be limited or withdrawn.[193]

4. Detention

272. In cases where minors are detained, according to the federal bill governing the criminal status of minors,[194] custody is necessarily withdrawn from the father, mother or foster parents for the duration of detention, as the children are no longer living with their parents during that time. The parents no longer have the power to decide where they should reside or what direct assistance they should receive. Where necessary, the executing authority regulates the right of the parents or third parties to maintain personal relations with the minor in accordance with articles 273 et seq. of the Civil Code. Any limitation or barring of personal relations between parents and children is admissible only in very limited conditions, namely if those relations are harmful to the child's development (CC, art. 274 (2)).

273. In regard to the particular case of mothers in prison, it should be noted that in Switzerland provision has been made for personal relations between children and their mothers over and above the access rights normally accorded. The "mother and child" section opened in 1962 in the Hindelbank women's penitentiary provides places for mothers accompanied by children up to three years old. Likewise, the "La Tuilliere" women's prison at Lonay (Vaud) occasionally takes in inmates' children.[195] In the penitentiary of the canton of Ticino an apartment has been set aside for visits and furnished in such a way as to provide a "normal" family atmosphere for a child whose parent is in prison. Relations between children and incarcerated parents are monitored by specialists.

D. Family reunification (art. 10)

1. Introductory remarks

274. According to article 10, paragraph 1, applications by a child or his or his parents to enter or leave a country for the purpose of family reunification shall be dealt with in a positive, humane and expeditious manner. This provision is interpreted not as creating a right to family reunification for the child or his or her parents, but as exhorting States parties to respect the child's interests as closely as possible while dealing with each application, within the framework of the provisions in force on immigration. The chairman of the working group of the Commission on Human Rights expressed that view when the Convention was being drafted, stating that article 10 "is not intended to affect the general right of States to establish and regulate their respective immigration laws".[196] The Federal Court has had occasion to confirm that interpretation and to state in a recent decision[197] that article 10, paragraph 1 does not confer on the child or his parents any enforceable right to family reunification, or undermine the immigration laws which States enact. Thus paragraph 1 prescribes a certain attitude for States parties, but does not affect their freedom to regulate immigration by setting conditions for family reunification. However, by expressly refusing family reunification to short-term resident aliens, Swiss legislation binds the executing authorities and prevents them from considering applications in a positive, humane and expeditious manner. It follows that Switzerland is not in a position, at least for the present,[198] fully to satisfy the requirement of article 10, paragraph 1. For that reason it made the following reservation on acceding to the Convention: "Swiss legislation, which does not guarantee family reunification to certain categories of aliens, is unaffected."

275. According to article 10, paragraph 2, a child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances, personal relations and direct contacts with them. Temporary residence for visits is a means of meeting this need. By providing, to that end, that children and their parents have the right to leave any country, including their own, and to return to their country, paragraph 2 confirms the rights recognized and applied by Switzerland.[199] However, it does not create an obligation to admit aliens into the national territory. Here, as in paragraph 1, the Convention leaves the competence of States in the area of immigration unaffected.

2. Family visits

276. Entry into Switzerland for the purpose of family visits is granted in principle to family members of foreign nationality - children and parents - when payment of the costs of their stay in and departure from Switzerland are assured and, a fortiori, when the objective conditions for family reunification are met. The same is true for regular contacts between parents and an adopted child, between a parent and the child of a first marriage and also between natural parents and their children. If there is any doubt about whether foreign residents can assume the costs of their stay for the family members visiting them, the authority can make the issuance of visas or permission to enter the country conditional on the submission of a declaration of guarantee, duly stamped by the competent authority of the place of residence. For the rest, temporary residence

for visits does not require any special authorization, provided the total period of stay does not exceed six months in each 12-month period and any stay of three consecutive months is necessarily followed by at least one month's absence from Switzerland.[200]

3. Family reunification

277. The child of a couple one of whom is Swiss or the child of a Swiss mother not married to the father acquires Swiss nationality at birth as of right.[201] As a Swiss national he or she may enter Swiss territory at any time, either to live with the Swiss parent or to maintain personal relations with that parent.

278. Reuniting family members of foreign nationality is within the purview of Swiss policy on migration. Thus the rules for family reunification apply only to foreigners admitted for long-term residence, of at least one year, either as part of the workforce, or as persons of independent means or others without paid work. According to statistics, family migration accounted for 30.8 per cent of entries for long-term stay in 1997, 29.8 per cent in 1998 and 30.6 per cent in 1999. Family reunification[202] in Swiss law applies to spouses and unmarried children under 18 years of age[203] (including adopted children and foreign children of Swiss parents).[204] Reunification may coincide with the foreigner's taking up residence or may take place thereafter.[205] In fact it should allow all members of a family stricto sensu, and not just some of them, to live together, so that the family dynamics may contribute to a better social integration of its members than if they are separated in different countries. The view is, therefore, that, according to established practice, family reunification should take place when the centre of family life is in Switzerland. In certain cases the authority will allow partial reunification when the parents live apart, in others reunification may be deferred if this is in the interests of the child, for example, in order to continue schooling in the country of origin before rejoining his or her parents. When the family has been separated or divided and only one of the parents resides in Switzerland, the child living abroad does not have an unconditional right to join that parent: at the least the child's main family relationship[206] must be with that parent or new family relations must be clearly defined with the parent living in Switzerland if the latter is being called on to replace a deceased spouse who had custody or a spouse who failed to discharge his or her parental duties.[207] Any measures that would serve only to divide the family further should in any case be avoided.[208] According to the legislation in force, reunification must take place around the parents, either the mother or the father, rather than the child. If the child is alone in Switzerland, that can only be a temporary situation for purposes of schooling, higher studies or medical treatment, with the centre of family life remaining abroad. Thus children cannot be joined by their parents, but may, in accordance with article 10, paragraph 2 of the Convention, maintain regular contacts with them.

279. Switzerland has two types of residence permit: a temporary residence permit,[209] of limited duration and subject to conditions, and a permanent residence permit,[210] which is unconditional and of indefinite duration and may be obtained after regular and uninterrupted residence of 10 years, or of 5 years in the case of bilateral or reciprocal agreements. The decision on family reunification will depend on the type of permit held by the foreign national, specifically on whether the family reunion would[211] or would not[212] be based on a right. When the conditions for family reunification are not present, family reunification can nevertheless take

place by other means, on a case-by-case basis, if there is an overriding interest in favour of a family member's receiving a temporary residence permit: this is the case if the person concerned can claim the right to respect for family life in accordance with article 8 of the European Convention on Human Rights, particularly in cases of excessive hardship[213] or for other important reasons.[214]

4. Right to family reunification

280. Article 17, paragraph 2 of the Federal Act concerning the Permanent and Temporary Residence of Foreigners gives resident foreign nationals, that is those who possess permanent residence permits, the right to live in Switzerland with their families. For that purpose, it grants spouses not only the right to a temporary residence permit for as long as the couple live together, but also the right to a permanent residence permit after five years of living together in Switzerland. This article also grants children under 18 years of age[215] the right to be included on the permanent residence permit of one or both parents provided they live with them.

281. The right to family reunification will be recognized under that provision only if there is a serious intention of living together and there is no actual danger of members of the family becoming continuously or to any large degree dependent on public assistance. This right must also not be improperly invoked. The reasons for family reunification cannot be purely economic or professional.[216] Its aim is not to guarantee training in Switzerland or to offer a fresh start in life.[217] According to the Federal Court, this right has been abused when a parent who is a permanent resident of Switzerland, having deliberately chosen to live apart from his or her children for many years, invokes article 17, paragraph 2 of the Federal Act concerning Permanent and Temporary Residence of Foreigners in order to be joined by a child about to turn 18, on grounds of family reunification, with the sole aim of enabling the child to enter the Swiss job market just before he or she becomes subject to the quota restrictions on the foreign labour force.[218]

5. Family reunification on the basis of the right to respect for family life (CEDH, art. 8)

282. The European Convention on Human Rights (CEDH) grants no right of asylum, residence or extended residence. In its article 8 it does, however, protect family unity and shared family life. Thus measures taken by States - on restricted entry, expulsion or extradition - may interfere with the right to protection of family life. According to article 8, paragraph 2 of the European Convention interference with family life is nevertheless admissible so long as it is in accordance with the law, in the public interest and not excessive. The Convention therefore requires the immigration authorities to weigh the private interests served by family reunification against the public interest served by its refusal, with the public interest prevailing in order for the interference to be shown to be necessary.[219]

283. Following the practice of the authorities in Strasbourg, the Federal Court has also recognized in general that a right of residence in Switzerland may derive from article 8 of the European Convention.[220] According to the Federal Court, article 8 of the European Convention

may be invoked in the context of measures under the law relating to aliens provided that a family relationship exists between the foreign national and a person enjoying a right of residence (having Swiss citizenship or a permanent residence permit) or a person who can at least claim a right to extended residence. That relationship must be meaningful and intact.[221]

284. The right to respect for family life can however be invoked only when the measure taken by the State leads to the separation of family members. The State is therefore not interfering in family life when the foreign national has freely chosen to live apart from his or her family in another country.[222] The same holds true for a case in which family members resident in Switzerland could reasonably be required to go abroad with the person who has been refused a temporary residence permit and to live their family life abroad.[223]

285. At the outset the Federal Court had stressed that protection was confined to the family in the narrow sense of the term, i.e. spouses and their minor children. On that basis, family life in the meaning of article 8 of the European Convention can exist only between spouses, between parents and their minor children and between a separated or divorced father or mother who does not have custody and his or her minor children.[224] In view of Strasbourg case law, to the effect that article 8 of the European Convention could also apply to the life of the extended family, the Federal Court has been compelled to expand the scope of its protection of family life. That being the case, family life deserving of protection may also in principle exist when there is a relationship of dependence, between parents and their adult children or between more distant members of a family, such as brothers and sisters or half-brothers and sisters.[225]

286. The European Court of Human Rights had occasion to review that case law in the Gül case. The Federal Court had refused to allow Mr. and Mrs. Gül, who had a permit for temporary residence in Switzerland delivered for humanitarian reasons, to be joined by their six-year-old son, abandoned by his father in Turkey at the age of three months, because they had no irrevocable right of residence according to Federal Court case law.[226] The European Court also found that article 8 of the European Convention on Human Rights had not been infringed. The father, the plaintiff in the case, had other means available to him to enjoy family life with his son. A return to Turkey would certainly not be easy but neither would it be out of the question. In its line of argument the Court cited Federal Court case law to the effect that in principle only those persons who have a recognized right to residence in Switzerland, that is, who can at least prove a firm claim to a residence permit, have a right to family reunification.[227]

6. Special situations

287. Foreigners who do not have the right to permanent residence in the terms of article 17, paragraph 2 of the LSEE have no claim to family reunification. They need an authorization to bring in their spouses and dependent unmarried children under 18 years of age.[228] The authority takes its decision freely, in accordance with article 4 of the Act. In principle it may authorize family reunification for foreigners if their residence and, where relevant, paid employment appear sufficiently stable, if they live together with their family and have suitable housing for that purpose, if they possess adequate financial means to maintain the family and if childcare, where needed, is provided.[229]

288. Unmarried children under 18 years of age whose parents hold a temporary residence permit may obtain the same permit as the parents but cannot seek family reunification.[230] The conditions for family reunification must be met.[231] If one of the parents subsequently obtains a permanent residence permit, the children will have the right to that same permit provided they are unmarried and under 18; otherwise, the permanent residence permit can be issued to them only after a regular, uninterrupted stay of 10 years, or 5 years in the case of bilateral or reciprocal agreements.

289. The interests of unmarried children under 18 are also taken into account in the following situations: when the parents are separated or divorced, the children enjoy the same status as the parent (mother or father) who has custody. Parents who live in Switzerland may even, if they have a permanent residence permit, claim the right to bring the child into Switzerland if that child has a priority family relationship with them.[232] Unmarried children of a first marriage under 18 years of age may be included in the permanent residence permit of their father or mother by analogy with article 17, paragraph 2 of the LSEE. Moreover, it is consistent with practice for the child of an unmarried couple who live together to obtain a permanent residence permit at birth if the father is Swiss. If the father is a foreigner, the child will be given the same permit as the mother and will obtain a permanent residence permit at the same time as she does; if the couple subsequently marries, the child may have the status of either the mother or the father, whichever is more in his or her favour.[233]

7. Temporary residence authorized out of respect for family life

290. Normally any foreigner who is covered by article 17, paragraph 2 of the LSEE may also invoke article 8 of the European Convention on Human Rights which guarantees the right to respect for private and family life (para. 1), taking account of the interests involved (para. 2). That article does not guarantee the right to enter and reside in a given State, but foreigners may invoke it in certain circumstances to oppose possible separation from their family and obtain a temporary residence permit. To determine whether it must grant a temporary residence permit under article 8 of the European Convention, the immigration authorities must weigh public and private interests.[234] They will only do so when there has been a failure to respect family life, that is when the rights guaranteed by article 8, paragraph 1 of the European Convention[235] have been violated.

291. There is extensive Federal Court case-law drawing heavily on the Strasbourg courts. Article 8 of the European Convention protects foreigners from refusal or non-renewal of a temporary residence permit and allows them, on certain conditions, to join family members resident in Switzerland, to ensure that the family will not be separated.[236] Protection under this provision is confined to the family in the strict sense of the term, that is to the spouse and minor children living jointly. If the person needing a temporary residence permit is not one of those eligible for family reunification, the family relationship may nevertheless be protected if the applicant is mentally or physically disabled or seriously ill and is dependent on a member of the family who has a right to reside in Switzerland.[237] The protection afforded by article 8 of the European Convention can be claimed only if the family relationship is intact and meaningful.[238] This provision does not grant an absolute right of entry and residence to members of a family,[239] particularly if the foreigner has taken the decision to live separately from the family in another country.[240]

292. According to the Federal Court, article 8 of the European Convention may be invoked in the case of children living abroad vis-à-vis a parent with the right to a temporary residence permit living in Switzerland with whom the children have their main family relationship.[241] However, members of a family cannot invoke article 8 of the European Convention if their spouse or parent resident in Switzerland does not have an assured right to be there, but only a temporary residence permit which the cantonal authority is free[242] to renew or not.[243] In its decision in the Gül case[244] which was upheld by the European Court, the Federal Court made it clear that a foreigner in possession of a temporary residence permit, whose immigration status is therefore insecure, is not in a position, by virtue of his or her presence in Switzerland, to confer on another foreigner a more secure status, i.e. a right to a temporary residence permit.

293. The Federal Court has denied the right to protection under article 8, paragraph 1 of the European Convention to foreigners who wanted to develop their professional career or complete their training, whose applications were clearly motivated by other considerations than that of beginning or resuming a shared family life.[245]

294. The Federal Court has found that respect for family life is not infringed when the close family members who have the right to live in Switzerland can be expected to go abroad with the person who has been refused a residence permit.[246] Finally, in the case of a child with the right to reside in Switzerland, whose father had lost his temporary residence permit through divorce, the Federal Court did accept article 8 of the European Convention as a justification for granting the father a temporary residence permit, even though the child was not under his parental authority or in his custody, because he had a very close relationship with his child.[247]

8. Exceptional authorization of residence

295. If in a given case the conditions for family reunification are not met, the cantonal immigration authorities may nevertheless, in view of circumstances, allow foreigners to live in Switzerland with their families by granting them a permit for temporary residence without the right to work when important reasons so dictate,[248] or by granting them access to the labour market without making them subject to foreign manpower quotas, when refusal of a permit would place them in a situation of extreme gravity.[249] Although these two provisions do not confer a right of residence, they give the authority power to take the best interests of the child into account.

9. Family reunification and asylum

296. Requests for family reunification supported by arguments relating to the political situation in the country of origin must be submitted on the basis of the Federal Asylum Act (Lasi) of 26 June 1998[250] rather than the LSEE. Thus reunification of the family, in the meaning of article 10, paragraph 1 of the Convention, will depend on the foreigner's status: whether he or she is an asylum-seeker, a refugee, a person being admitted temporarily or a person to be protected temporarily.

297. Asylum-seekers are not permitted to bring in members of their family during the asylum procedures. If they have joined them, however, the ODR will act in such a way as to keep the family together, in view of the foreigner's right, under article 8 of the European Convention, to respect for family life.[251]

298. Refugees, on the other hand, have the right to the reunification of their family as it was at the time when they fled and to have the members of that family enjoy the same status as themselves in Switzerland, if they are of the same nationality. However, if the refugee's family is binational and if there is no danger of persecution in the other country of origin, the authority can require[252] the reunification of all the members of the family to take place in that other country, provided of course that their residence there is possible and lawful and may reasonably be required. The principle of the unity of the family also prevails if the refugee is sent back: the Federal Office for Refugees sees to it that the departure deadlines assigned to each of the family members allow them to leave Swiss territory together.[253]

299. Under article 51, paragraph 1 of the Lasi, refugees' spouses and minor children have the right to join them in Switzerland. Paragraph 2 allows other close family members to be included within the circle of beneficiaries, if the particular circumstances so justify. That provision also allows refugee children who are alone in Switzerland to be joined by their parents. Children born in Switzerland of refugee parents also obtain refugee status.[254]

300. When applicants are refused asylum but permitted to remain in Switzerland temporarily because they cannot be expelled, it is ORD practice to extend temporary admission to include all the members of their family who have applied for asylum. Case law has upheld this practice, based on the principle of family unity laid down in article 44, paragraph 1 of the Lasi.[255] The order in which the various family members arrived in Switzerland and the question of whether the family was formed prior to departure or after arrival in the host country have no bearing on the decision. On the other hand, when the request for family reunification[256] is submitted abroad, the person who is temporarily admitted cannot be joined by the members of his or her family unless the normal conditions for family reunification have been met;[257] moreover, the cantonal authority must be prepared to issue a temporary residence permit to each of the family members, there must be no possibility, in the short term, of carrying out the decision to expel the foreigner who is being admitted temporarily and there must be no reason to limit that foreigner's right to respect for family life.

301. Thus, where both expulsion and admission are concerned, the legislation relating to asylum takes into account the need for family reunification and consequently protects the interests of the child.

10. Reservation

302. From the foregoing it can be seen that long-term resident foreigners may obtain family reunification, either by claiming a right, meeting certain conditions or resorting to other legal means of obtaining residence. Its immigration legislation and case law protecting family unity enable Switzerland to take account of the need for family reunification of the dependent children of long-term resident parents.

303. However, the law in force does not permit seasonal workers, short-term permit holders, trainees, pupils and students or persons taking courses of treatment to bring their family members into Switzerland other than for visits (six months a year).[258] They nevertheless have the right to submit an application for family reunification and to obtain a decision against which they can appeal. This restriction on family reunification, which is at present being contested, has been maintained not only because of the difficulty of getting a family that has already settled to leave Switzerland, but also in an effort to spare family members all sorts of complications linked to schooling and housing in both the country of departure and the host country. Exceptions have already been made, it is true, for certain foreigners, to cover the period of their activity in Switzerland. Press correspondents, the staff of foreign Governments, visiting academics and persons on sabbatical, doctoral and post-doctoral students and Confederation scholarship-holders, as well as certain trainees from countries which apply reciprocity agreements, may be authorized to come to Switzerland with members of their families and the latter are usually admitted to the job market.

304. Those exceptions aside, it must be noted that by refusing short-term resident foreigners the right to family reunification Swiss law is not entirely in compliance with the requirements of article 10, paragraph 1 of the Convention. It is for that reason that a reservation has been made in this regard. However, as stated above, the amendments to the law in force needed for the withdrawal of Switzerland's reservations in the area covered by the LSEE are being undertaken. Thus, a complete revision of the LSEE is under way, which will extend to all categories of foreigners the opportunity to benefit from family reunification.[259]

E. Illicit transfer and non-return (art. 11)

1. National measures

305. Minors are specifically protected against abduction under the Criminal Code. According to the terms of article 220 of the Criminal Code, any person having abducted from or having refused to hand over a minor to the person holding parental authority or acting as guardian of the child shall be punishable, in response to a complaint, by imprisonment or a fine. In 1997, 21 persons were tried under those provisions. Criminal proceedings are preferable a priori in cases of abduction involving States that are not party to the relevant international conventions (see section 2 below). Criminal proceedings may, however, be initiated with a request to return to civil treaty proceedings, for instance to facilitate searches to locate the child or to increase pressure on the abductor by applying for extradition. For the sake of the child's protection, however, all aspects of the matter must be carefully considered before criminal proceedings are initiated, as the outcome of the latter might be harmful to the child if relations with one of the two parents were to be broken off again or if they prevented the possibility of a friendly settlement.

306. Under article 292 of the Swiss Criminal Code, a civil judge is authorized to apply a penalty (detention or fine) should the parties not comply with the court ruling. While it may be admitted that civil proceedings have certain advantages in family conflicts, there is no doubt that

applying treaty provisions and especially implementing the resulting decisions does present some difficulty. Since the means of coercion of the criminal law are not available in this case, the civil courts are advised to apply the above-mentioned provision in order to avoid the child being upset again when the ruling is applied.

307. The implementation of decisions to return the child are given special consideration by the authorities or social services involved, who try to arrange the return in the best interests of the child. Like other central authorities, the Swiss central authority tends to encourage a follow-up of return decisions, in order to avoid a situation, following the restoration of custody rights, where the child would lose all contact with the abducting parent, which is generally harmful to a child's development.[260]

308. Switzerland attaches a great deal of importance to the problem of the illicit transfer and non-return of children. The country has a central authority on child abduction, which is attached to the Federal Office of Justice within the DFJP, which acts in conjunction with the federal authorities - particularly the Federal Police Office - and cantonal authorities. Apart from the courts responsible for issuing decisions on the return of children or the protection of access rights, which play an important role, other cantonal authorities, especially tutorship and police bodies, become involved in cases of abduction. The authorities assist the persons concerned to obtain the return of children illegally abducted abroad.

309. The prevention of abductions is particularly important insofar as it constitutes a form of advance protection for the child against the traumas that frequently occur as a result of events of this kind. It is even more important in cases where the State where the child might be taken is a party to none of the conventions. Prevention also reinforces the preventive effect that treaties produce thanks to their extensive scope (with fewer and fewer so-called shelter States or States where the treaties cannot be invoked). The central authority will in such cases maintain the necessary contacts with the authorities concerned and will supply applicants with advice and information and an aide-memoire, and may invite the parents to contact the Swiss Foundation of the International Social Service (ISS), which also deals with these matters.

310. The granting of cross-border access rights in cases of divorce or separation is another factor which can help prevent the international abduction of children. If the foreign element, such as the likelihood of parents residing in different countries, is duly taken into consideration at the time the marriage or household is dissolved, this can to some extent avoid any non-return of children following the exercise of an access right that the parent exercising the right might have considered inadequate or too laboriously obtained.

311. The recognition of custody decisions must also be facilitated, since it can preventively afford the child some stability in the exercise of rights to which he or she is considered entitled. The recognition of custody decisions deserves to be applied more frequently, in view of the potential protection it can afford the child, whose situation will then be dealt with in similar fashion in the States of residence or States of origin of both parents.

2. Bilateral and multilateral agreements

312. Switzerland has ratified the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children of 20 May 1980[261] and the Hague Convention on the Civil Aspects of International Child Abduction of 25 October 1980.[262] These Conventions, which have been in force since 1 January 1984, are applied directly in Switzerland, without any need for a federal implementation act.

313. Switzerland, which is in favour of extending multilateral agreements in this field, has accepted the accession of most of the States parties to the above-mentioned Hague Convention.[263] In 1998 and 1999, 162 formal applications were dealt with under the two aforementioned Conventions, leading to a positive outcome in more than two thirds of the cases, in the form of returned children, protected access rights or friendly settlements between parents. The States with which Switzerland maintains the most frequent relations in this respect include Germany, the United States, France, Italy, United Kingdom, Portugal and the States of the former Yugoslavia.

F. Recovery of maintenance for the child (art. 27 (4))

314. If parents fail in their duty of maintenance,[264] children can apply for maintenance in court, from their father, mother or both under article 279 (1) of the Civil Code. A maintenance action may be brought either by children themselves with the consent of their legal representative, if they are capable of forming their own views, or on their behalf by their legal representative. If there is a conflict of interest between the parents and the child, the tutorship authority may appoint a tutor to claim a maintenance allowance on the child's behalf.[265]

315. An action for recovery of maintenance must be decided by a judge, in civil proceedings, and never by an administrative authority. According to federal law,[266] cantons must apply simple, rapid proceedings to any litigation concerning the maintenance obligation. The maintenance contribution must be in keeping with the needs of the child, as well as with the means and resources of the father and the mother, in the light of the child's own assets and income.[267] Any child allowance payable to the person responsible for the child's upkeep must in principle be paid over and above the maintenance contribution.[268] Contributions are payable to the child's legal representative.[269]

316. Should the father or mother fail to provide maintenance, the tutorship authority or other body appointed under cantonal law must - adequately and free of charge - assist the other parent, on request, to obtain enforcement of maintenance benefits.[270] The judge may also require the parent with the maintenance obligation to provide appropriate sureties for future maintenance contributions or may order the parent's debtors to pay all or part of the payments they owe directly to the child's legal representative.[271]

317. According to the principle of advancing maintenance contributions, the authorities will pay benefits to the child on behalf of the defaulting parents, where father and mother fail in their maintenance obligation.[272] All cantons run a scheme of advances.

318. According to article 217 of the Criminal Code, any person failing to pay maintenance or grants owed under family law, though he or she possesses the necessary means or could possess them, shall, on a complaint, be punishable with imprisonment. Authorities and services appointed by the canton also have a right of complaint in this respect. In 1996, 657 persons were tried under this provision of the criminal law.

319. With regard to international enforcement of the right to maintenance, Switzerland is a party to the Hague Conventions on the law applicable to maintenance obligations towards children, of 24 October 1956,[273] concerning the recognition and enforcement of decisions relating to maintenance obligations towards children, of 15 April 1958,[274] on the law applicable to maintenance obligations, of 2 October 1973,[275] on the recognition and enforcement of decisions relating to maintenance obligations, of 2 October 1973,[276] and to the New York Convention on the Recovery Abroad of maintenance, of 20 June 1956.[277]

G. Children deprived of a family environment (art. 20)

320. As we mentioned earlier, children must not - in Switzerland - be deprived of a family environment, except where such a measure is the only way of avoiding their development being jeopardized.[278] Children who have been withdrawn from their parents' custody must be given an appropriate placement,[279] that is, one suited to their personality and requirements in terms of education and training. In addition to the parents, a child capable of forming his or her own views must be heard.[280] All the cantons try to take account of the religious, cultural and linguistic background of children in need of placement. Very often it is the specialized services that deal with such cases (such as the youth department, or the psychological or psychiatric service for young people), taking account of the child's personal circumstances.

321. Placement may be made in a foster family, in an institution or in an establishment for children or with a view to subsequent adoption.[281]

322. Under article 316 of the Civil Code, the placement of a child with foster parents or in an institution requires an authorization by the tutorship authority and is subject to supervision by the tutorship authority or any other body appointed under cantonal law.

1. Family placement

323. Family placement is governed by articles 4 et seq. of the Federal Ordinance regulating the placement of children (OPE).[282] An official authorization is required for the placement, for more than three months or for an indefinite time, of a child of school age or under 15 years, with foster parents who undertake to provide for the child's maintenance and education, either against payment or free of charge.[283] This authorization will be delivered only if the personal qualities, educational aptitudes and state of health of the foster parents and other persons living in their household, and the conditions of accommodation are such as to ensure that the placed child will receive adequate care, education and training, without harming the well-being of other children

living in the family.[284] Supervision takes the form of visits by a qualified person appointed by the authority. If certain shortcomings cannot be remedied, the authorization will be withdrawn. In the event of imminent danger, the child will be immediately withdrawn.[285]

2. Placement in an institution

324. Similarly, institutions that take in children, look after them and provide them with an education and training, require an official authorization.[286] Before it delivers the authorization, the authority must make sure that the following conditions are met: that conditions in the institution are conducive to the physical and mental development of the children; that the personal qualities, educational abilities, state of health and training of the director of the institution and his or her assistants are such as to enable them to perform their task; that boarders receive a healthy and varied diet and are kept under medical supervision; that boarders are suitably insured against sickness, accident and civil liability.[287] A qualified representative of the authority must visit the institutions as often as necessary, but at least once every two years.[288] The representative must interview boarders concerning their condition and the way they are looked after. An authorization may be withdrawn in the event of shortcomings which the director of the establishment has not remedied in good time. In the event of imminent danger, the authority must immediately close down the establishment.[289]

3. Placement in an establishment

325. The child may be placed in an establishment providing assistance. According to the Federal Court, there is placement in an establishment in the meaning of article 314 (a) of the Civil Code in cases where the child's freedom is more restricted than that of children of the same age brought up in a family.[290]

326. If a child is placed in such an establishment, articles 397 (d), 397 (e) and 397 (f) of the Civil Code, concerning court supervision and procedure in the event of deprivation of freedom for the purpose of assistance of adult persons or persons deprived of legal capacity, apply by analogy.[291] Children not yet 16 years of age cannot appeal to the judge personally, although a person close to the them may do so on their behalf.[292] An appeal against placement in such an institution or against a refusal to end such placement may be lodged before the Federal Court.

H. Adoption (art. 21)

327. In Switzerland, the best interests of the child are the guiding principle in the case of adoption. A child may not be adopted unless all circumstances indicate that it will be for his or her good. Adoption is possible only if the adoptive parents have cared for the child and seen to his or her upbringing for at least two years.[293] Placement for the purpose of adoption may be authorized only if there is no legal impediment to adoption and if circumstances indicate that the adoption will be granted.[294] Consideration of best interests of the child is also important if the adoptive parents have other children, since adoption must not unfairly detract from the situation of the children of the adopting household, nor must it be prejudicial to their development or unfavourably alter the family structure.

1. Adoption where no foreign element is present

(a) Consents required

328. If the child is capable of forming his or her own views, adoption may take place only subject to his or her consent.[295] Such consent must be given to the adoption authority or the body in charge of the inquiry. The child must in any event be appropriately informed as soon as possible of the situation. If the child is under tutorship, even if capable of forming his or her own views, the adoption is still subject to the consent of the tutorship authority.[296] The good of the child is a decisive consideration with respect to the decision to grant or refuse such consent.

329. The father and mother must also in principle both give their consent.[297] Such consent cannot be given before six weeks after the child's birth and may be withdrawn within six weeks following its receipt by the authority.[298] The consent of one of the parents may be dispensed with, in the event that that parent is unknown, has been absent for a long time, has no known address, is incapable of forming his or her own views on a sustainable basis or has never shown any real concern for the child.[299]

330. If the adopting parents have children, the latter's opinion must also be taken into consideration.[300]

(b) Other conditions

331. A necessary condition for adoption is that the child be at least 16 years younger than the adoptive parents.[301] Furthermore, spouses can only adopt jointly.[302] Spouses can adopt together only if they have been married for five years or if they are both aged at least 35.[303] The adoption of a spouse's child constitutes a variation of joint adoption. Thus a spouse may adopt the other spouse's child provided that the adopting spouse has been married to the latter for at least five years.[304] Adoption by a single, unmarried person is also possible, provided that that person is at least 35 years of age.

(c) Competent authorities and inquiries

332. Adoption is granted by the cantonal authority with jurisdiction in the adoptive parents' place of domicile.[305] It may be decided only after a detailed inquiry into all the relevant circumstances.[306] In particular, a number of factors such as the personality and health of the adoptive parents and the child, mutual suitability, the adoptive parents' ability to bring up the child, their economic situation, their motivations and their family circumstances, and any changes in the foster link are looked into. Subject to the terms of articles 268 to 268b of the Civil Code, adoption procedures are governed by cantonal law. If adoption is refused, applicants may appeal to the Federal Court.

333. The placement of children by intermediaries for eventual adoption is also supervised by the canton; any person making placements, whether in a principal or an accessory capacity, must obtain an authorization.[307]

(d) Effects of adoption

334. An adopted child acquires the same legal status as a child of the adoptive parents (CC, art. 267 (1)). Adoption therefore gives rise to a filiation link between the adopting person, or adopting spouses, and the child. Any former filiation link is extinguished (CC, art. 267 (2)), with the exception, in the event of adoption by one of the spouses of the child of the other spouse, of the link with the adopter's spouse. Adoption is indissoluble, except in the event of annulment proceedings (CC, art. 269-269b) or another subsequent adoption. The child acquires a filial relationship with the adopting parents as if he or she were their own blood child. No distinction is made between blood relations and adoption in that respect. The adopted child receives the surname of the adoptive parent at the time of adoption. Adoption then gives rise to a duty of maintenance by the adoptive parents, who acquire parental authority over the minor in full right (CC, art. 296). The child's right to know the identity of his or her biological parents has already been mentioned in the commentary relating to article 7 of the Convention.

2. International adoption

(a) Legal terms and guarantees for the child

335. In Switzerland, generally speaking, the following principle determines the attitude to international adoption: adoption abroad should be considered as an appropriate means of giving children a family, only if the children cannot, in their country of origin, be suitably brought up either in their own family or in an adoptive or foster family.[308]

336. The terms of an adoption granted in Switzerland are governed by Swiss law. If it appears that an adoption might not be recognized in the State of residence or in the national State of the adopting person or the adopting spouses, causing serious harm to the child as a result, the authority must also take account of the conditions arising under the other legislation concerned. If, despite that, recognition does not appear assured, the adoption must not be granted.[309]

337. According to article 78 (1) of the Federal Act concerning International Private Law (LDIP),[310] adoptions decided abroad are recognized in Switzerland provided that they have been granted in the State of domicile or in the national State of the adopting person or the adopting spouses.

338. Article 78 (2) of the same Act stipulates, moreover, that adoptions or similar institutions under foreign law, whose effects are essentially different from the filiation link as understood in Swiss law, are recognized in Switzerland only with the effects to which they give rise in the State where they have been decided. Such effects cannot be broader in scope in Switzerland than abroad. If the conditions of international private law are met, it is possible, in such cases, to apply for full adoption in Switzerland.[311] It follows that if the foreign adoption produces only the effects of a simple adoption abroad, it cannot be recognized in Switzerland as a full adoption, even though only the latter form of adoption is recognized under current Swiss law.
Article 78 (2) merely stipulates the limits of the equivalent status given to simple adoption. It does not, however, contain a direct reference to which legal provisions would apply to such an adoption, as an exception to the general rules of conflict governing the various effects of filiation, and successions.[312]

339. According to article 75 (1) of the LDIP, the adoption may be granted by the Swiss judicial or administrative authorities of the place of domicile of the adopting person or adoptive spouses.

340. The Federal Ordinance regulating the Placement of Children of 19 October 1977 (OPE)[313] applies in cases where a foreign adoption cannot be recognized in Switzerland[314] or where an adoption has not been granted abroad. This Ordinance governs the placement in Switzerland of children coming from abroad for subsequent adoption by persons domiciled in Switzerland.

341. Under the terms of the OPE, the placement of children outside the family home is subject to authorization and supervision. This authorization may be delivered and the supervision exercised by the tutorship authority in charge where the placement has been arranged. The cantons may transfer these tasks to other authorities or services.

342. According to article 4 of the OPE, an authorization is required in order to place a child of foreign nationality who has lived until then abroad, with a view to subsequent adoption, in cases where the child is aged less than 18.

343. As mentioned earlier, under the OPE, the placement authorization can be issued only if there is no legal impediment to a future adoption and if it appears likely that the adoption will be granted. In the light of article 21 (c) mentioned above, it is worth noting that in the event of the placement of a foreign child, further conditions need to be satisfied, relating partly to the qualities of the foster parents and partly to the consent of the authority in charge of the placement in the State of origin.[315]

344. Thus when children of foreign nationality who have lived abroad until then are placed for adoption, the foster parents must be prepared to accept them with their particularities and to teach them about their country of origin in a manner suitable for their age. The foster parents must also submit:[316]

A medical report on the health of the child;

A report on the life the child has had until then, insofar as the details are known;

A document certifying that the parents have consented to the child's adoption or a statement by an authority from the child's country of origin giving the reasons why such consent could not be given;

A statement by a competent authority in the child's country of origin certifying that the child may be placed with foster parents in Switzerland.

345. By virtue of the commitment they had to undertake prior to the placement being authorized,[317] the foster parents must provide for the child's maintenance in Switzerland as if he or she were their own, even if adoption is not granted, and they must repay the public authority

any maintenance costs for the child that the authority has incurred on their behalf. This maintenance obligation still applies even if the child has to be placed elsewhere. It will be extinguished only if the child is adopted by third parties or returns to his or her country of origin.

346. The authorization delivered for the adoption of a child of foreign nationality[318] will take effect only once the visa has been issued or when the issue of a residence permit is no longer in doubt.[319]

347. Even if children have been adopted in their State of origin, they are considered in Switzerland to be children placed with foster parents, barring exceptional cases where the foreign adoption can be recognized in Switzerland.[320] The future adoptive parents are not yet vested with parental authority, but are subject to the supervision of the placement authority. The legal representative of the child is generally a tutor, who supervises the probationary period and must give consent to the subsequent adoption. If any problems arise and cannot be resolved within a reasonable delay, the child's legal representative may, if necessary, place the child elsewhere.

348. As in the case of a purely national adoption, the child enjoys strong legal protection during the probationary period.

349. Some inequalities do remain, however, with regard to rehabilitation measures under disability insurance.[321] According to article 9, paragraph 3, of the Federal Act concerning Disability Insurance of 19 June 1959 (LAI[322]), foreigners under the age of 20 are entitled to undergo rehabilitation if, when the disability occurs, their father or their mother is insured and, in the case of foreigners, has contributed for at least one full year or has resided uninterruptedly for 10 years in Switzerland. Furthermore, the child concerned must have been born disabled in Switzerland or, when the disability occurred, must have resided in Switzerland uninterruptedly for at least a year or since birth. This means that children moved to Switzerland for adoption are in any case not entitled to rehabilitation measures provided for by the LAI prior to the grant of adoption, that is, for at least two years. If the adoptive parents are of foreign nationality, the child is entitled to benefits only if they meet the conditions mentioned above, even after adoption has been granted. It should be noted, however, that some of the gaps in social insurance have been filled by the Federal Act concerning Sickness Insurance of 18 March 1994 (LAMal[323]). After the forthcoming ratification of the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption (see subparagraph c), the number of problem cases should be reduced even further, since the Convention substantially facilitates the recognition in Switzerland of foreign adoptions.

350. Until they have been adopted, whereupon they take on the nationality of their Swiss adoptive parents, children remain foreigners and therefore require a residence permit. A permit may be granted to a child placed with foreign foster parents provided that the conditions stipulated in the Civil Code for the placement of children and adoption have been met.[324] Such permits are delivered by the relevant cantonal authorities. The latter work in close contact with the services specializing in the protection of children and young people, which issue authorizations with a view to adoption. If an adoption is not granted and fails again after a further placement, the residence permit which has been granted cannot be extended. However,

in practice children in these cases are regularly allowed a residence permit - which must be renewed each year - if there are important reasons for doing so. So far there have never been any cases of forced returns. In view of the forthcoming ratification of the above-mentioned Hague Convention, it is expected that children will be granted entitlements to reside in Switzerland in such cases.

351. The situation is different in the case of foreign nationals resident in Switzerland wishing to adopt children. Until they are adopted, they also need a residence permit.[325] Once they have been adopted, they are included in the temporary or permanent residence permit of their adoptive parents, provided that the necessary conditions are fulfilled.

352. The question whether the situation of children under the law relating to aliens could be further improved is currently being considered as part of the revision of the Federal Act concerning the Permanent and Temporary Residence of Foreigners.[326]

(b) Measures against undue material gain arising from an international adoption

353. In order to ensure that the placement of a child does not give rise to undue material gain for the persons involved, under Swiss law intermediaries are entitled only to reimbursement of their expenses and modest remuneration for their work.[327] It is forbidden for foster parents to pay any sums to an intermediary or to natural parents for care given to the child.

354. A bill which is currently being drafted (see also under section (c) below) takes account of the obligation for contracting States under the Hague Convention on Adoption to introduce measures against child trafficking. Under article 24 of the new law, prison sentences will be handed down against anyone who, in exchange for the offer of material gain or other benefit, succeeds in obtaining the agreement of biological parents or other custodians of the child, or that of an authority or persons involved in the adoption procedure, for a child normally resident abroad to be placed in the care of a person normally resident in Switzerland with a view to adoption. Any person acting in a professional capacity or as part of a criminal gang or organization shall be sentenced to imprisonment for not more than 10 years and shall be fined up to Sw F 100,000.

(c) Bilateral and multilateral agreements

355. Since 1 April 1973, Switzerland has been bound by the European Convention on the Adoption of Children of 24 April 1976.[328] Moreover, it is still bound to Austria and the United Kingdom by the Hague Convention on Jurisdiction, Applicable Law and Recognition of Decrees Relating to Adoptions of 15 November 1965.[329]

356. In Switzerland, preparations are under way for the ratification of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption of 29 May 1993 and a federal law is being drafted to give effect to the Convention in Swiss legislation.[330] The new law incorporates the procedure set out in the Hague Convention in existing Swiss placement and adoption procedures. Provisions will also be made to ensure the protection of the child in the event of international adoption and especially to combat undue material gains and child

trafficking. These measures apply whether or not the child comes from a contracting State. Lastly, two amendments are to be made in the Civil Code, one centralizing responsibility for the placement of children with a view to adoption with a single cantonal authority, and one to reduce to one year the probationary period that must precede adoption under the terms of article 264 of the Civil Code.

357. Pending the entry into force in Switzerland of the above-mentioned 1993 Hague Convention, Switzerland and Romania concluded a cooperation agreement with respect to adoption on 2 October 1997.

2. Statistical data

358. In 1997, 1,043 children were adopted in Switzerland. There were practically the same number of girls as boys (91 boys and 100 girls in 1990, 99 boys and 100 girls in 1995, 87 boys and 100 girls in 1997). Most of the children (544 in 1997) were adopted by a married couple. Also in 1997, 459 children were adopted by their stepfather, 18 by their stepmother and 22 by a single person.

359. In 1997, 502 children of European origin were adopted, including 310 of Swiss nationality. Another 71 adopted children came from Africa, 251 from America (especially Brazil and Colombia) and 228 from Asia (especially India and Thailand).

360. In 1997, 295 of the 1,043 children adopted were aged from 0 to 4 at the time of adoption. Another 348 were aged from 5 to 9, 206 from 10 to 14, 120 from 15 to 19 and 74 were over 20 years of age.

I. Periodic review of placement (art. 25)

361. Under Swiss filiation law, children may be withdrawn from their parents and placed appropriately in conformity with protective measures if the danger cannot be averted by any other means.[331] Article 313 of the Civil Code stipulates that measures taken to protect a child must be adapted to any change of situation. This gives rise to a duty to monitor any measures taken on behalf of the child. The need for periodic monitoring also arises from the general principle of Swiss filiation law, according to which all measures taken by the authorities must be based on the child's best interests.

362. Supervision of family placements and of institutions taking in children in order to care for them, educate them and train them, takes the form of visits by a qualified person appointed by the competent authority. Such visits should take place as frequently as necessary, but at least once a year in the case of families and at least every two years in the case of institutions.[332] The person carrying out the visit must make sure that the conditions that govern the placement are duly met.

363. The requirement that placement should be made in an appropriate establishment gives rise to an obligation on the part of the tutorship authorities to supervise periodically the implementation of such measures. The law also provides that the person concerned must be

released as soon as his or her condition allows it,[333] which implies checking that condition regularly. The person undergoing deprivation of liberty for purposes of assistance or someone close to that person can appeal to the judge, which is also possible if an application for release is rejected.[334] Children under the age of 16 years who have been placed in an establishment cannot themselves appeal to the judge against internment,[335] although someone close to them can bring the appeal. An appeal may also be brought before the Federal Court against placement in an establishment or refusal to grant a release.

J. Neglect, exploitation or abuse (art. 19), physical and psychological recovery and social reintegration (art. 39)

364. Apart from adopting legislative measures, especially in the form of protective provisions of the Civil Code[336] and the Criminal Code, Switzerland has established and continues to improve a number of structures chiefly aimed at prevention and assistance to victims of maltreatment.

1. Legislative measures

(a) Criminal law

365. In the first place, criminal law protects every person against physical violence through its provisions concerning offences against life and physical integrity.[337] Among those provisions, it is worth mentioning article 136 of the Criminal Code, which sentences to imprisonment or a fine anyone who has given a child under the age of 16 or who has made available to that child alcoholic drinks or other substances in such quantities as to endanger the health of the child, or narcotics in the meaning of the Federal Act concerning Narcotic Drugs of 3 October 1951.[338]

366. Secondly, the criminal law protects all persons who have suffered offences against their sexual integrity. The criminal law gives special protection to young people against disturbances that might affect their sexual development (arts. 187-200).[339] The age limit for protection is 16 years,[340] the age at which young people may be left free to make their own sexual choices. The protective provisions that apply to children in particular include articles 187 and 188 of the Criminal Code,[341] which punish any act that endangers the development of minors, as well as sexual acts with minors under the age of 16 or with dependent persons over the age of 16, and article 213 of the Criminal Code, which punishes incest.

367. Criminal proceedings for offences of a sexual nature committed with children remain valid for 10 years in order to take account of the fact that children often repress sexual acts which they have been forced to commit or keep silent owing to threats from the perpetrator. The current limitation period of 10 years, however, seems too short in some cases. Instead, a draft statute of limitations is being prepared, which would suspend prosecution for acts of a sexual nature committed with children under the age of 16 until the victim has reached the age of 18.

368. The Criminal Code also imposes[342] the obligation and the right to notify the tutorship authority of any situations that may be dangerous for children. If, in the course of prosecuting an offence committed against minors, the competent authority finds that other measures are needed,

it must immediately notify the tutorship authority.[343] The latter must decide, in each case, whether any further measures need to be taken, and, if so, which, and whether any other authorities or services need to be notified. The idea that the social services should be obliged to notify the tutorship authority or some other service designated for the purpose by cantonal law, if they are unable effectively to protect the child victim, is widely accepted among cantonal authorities. Under the terms of article 358 ter of the Criminal Code, persons normally bound to secrecy for professional or official reasons may be released from that obligation[344], in order to notify the tutorship authority of offences committed against minors which have come to their notice[345]. Also under article 358 ter of the Criminal Code, the persons concerned may dispense with the sometimes cumbersome need to obtain the consent of a higher authority and may, in case of emergency, provide information immediately. Once the tutorship authority has been notified, it is not generally speaking obliged to initiate criminal proceedings. It will adopt a cautious approach, however, especially to avoid any secondary victimization. But in general it will not on that account drop all criminal proceedings. In some cases, criminal proceedings are unavoidable in the general interest, whenever a wider circle of potential victims needs to be protected. Whichever the case may be, in order to ensure proper enforcement of article 358 ter of the Criminal Code, the tutorship authority must have the necessary means to take action at short notice (e.g. safeguarding threatened persons, or supplying details to the authority where necessary).

(b) Civil law

369. The measures provided under family law to protect children when their interests are threatened are referred to in the commentary relating to articles 3 and 9 of the Convention. Thus when the development of a child is threatened and the parents are either unwilling or unable to remedy the situation, the tutorship authority will automatically take whatever measures are required to protect the child.[346] The tutorship authority must also do so for children placed with foster parents or living, in other cases, outside the family unit.[347] Generally speaking, the children concerned are living with foster families, in day care institutions, in homes, in youth hostels or in residential communities. The authorities must automatically take action as soon as they have been informed of the danger threatening the development of the child. Anyone, especially the child or either of the parents, can report the case to the authority.

370. In articles 307 et seq., the Civil Code lists a number of measures which can be taken to protect the child, ranging from simple instructions to parents to the withdrawal of parental authority, and including the appointment of a guardian, the limitation of parental authority and the withdrawal of the child's custody.[348] Appeals may be lodged against the tutorship authority's decisions.[349] Under article 317 of the Civil Code, the cantons must take appropriate measures to ensure effective coordination between the services in charge of protecting children and assisting young people, the tutorship authorities, authorities in charge of measures relating to the criminal law for children and all other services involved, including schools.

2. Federal measures

371. On a mandate by the DFI, the Working Group on Maltreated Children published a report in 1992 on the problem of ill-treatment inflicted within the family. The report proposes a series of practical recommendations, intended both for the federal and cantonal authorities and

the professional circles concerned. Following the opinion of the Federal Council on the report, the Central Organization for Family Questions of the Federal Social Insurance Office was instructed to perform some of the coordination tasks related to the protection of children. For instance, this body provides information on assistance and training facilities, coordinates research work and supports prevention projects. Since 1996, it has been allocated an annual budget of Sw F 150,000 (Sw F 250,000 in 1999 and about Sw F 315,000 in 2000) for projects to prevent the maltreatment of children. The projects undertaken since 1996 include:

The establishment of a computerized file (to be made available on the Internet) and the publication of a Swiss directory of assistance and advice services for maltreated children;

Establishment of continuing training courses for specialists dealing with child maltreatment. More courses are provided under the Federal Act concerning Assistance to Victims of Offences (LAVI);

Financial support for the projects of private organizations, such as: films or video clips on the prevention of violence in the family; widely circulated brochures on child maltreatment and on non-violent education; an exhibition of children's drawings on the theme "Better have peace", which consisted of 400 drawings and was shown in four towns each representing a linguistic region in 1998;[350] an exhibition on parents' training, also shown around Switzerland; a video clip on prevention of the "shaken child" syndrome; research into ill-treatment and sexual abuse in sport;[351]

Research for the preparation of a global concept of prevention of ill-treatment and sexual abuse and research into the commercial exploitation of minors in Switzerland.[352]

The following are some examples of measures taken or projects run by other bodies or organizations:

After the issue was raised twice in Parliament, the Government has been considering the possibility of taking public relations measures in the field of violence against children.[353]

The telephone answering service Association Help-o-phone, for children and young people in distress, subsidized by the Confederation (OFAS), has existed since 1993. As of March 1999, it can be called from anywhere in Switzerland on a single 3-digit number (147). This easily accessible answering service allows children, anonymously and confidentially, to express their feelings freely. Financial support is also provided to train the persons answering the calls in order to ensure that they are properly qualified.

The interactive Internet prevention server CIAO (www.ciao.ch), where young people can ask questions concerning maltreatment, sexuality, health, drug addictions and children's rights which gives reference addresses.

The Federal Bureau for Equality between Women and Men organized a roving exhibition in 1992 to make the population aware of the problems of sexual abuse and incest affecting girls.

The Federal Youth Commission made 1998 the year of "Youth and violence". In addition to the publication of a report with substantive articles and interviews of young people, one of the main activities has been workshops in Biel, where specialists have met to discuss the topic and make practical suggestions. An interactive play was put on for the occasion.

The Federal Sports Office and the Swiss Olympic Association have looked into the prevention of sexual abuse in sport. A working group was set up, in order in particular to consider the possibility of introducing training or other forms of action, as well as informing the public about help and guidance centres.

The National Research Programme on everyday violence and organized crime (PNR40) was launched in 1997, with more than 20 research projects currently under way. A first objective has been to describe the phenomenon and analyse its effects, the next aim being to develop and consider prevention measures and other action in those two areas. As far as everyday violence is concerned, the projects concentrate on violence in private life and violence among young people, especially at school, as well as sexual violence.

3. Cantonal and communal measures

372. Owing to Switzerland's federalist system and its principle of communal independence, the cantons and communes also play an essential part.

(a) The cantonal services for the protection of youth deal with practically all aspects concerning the development of a child (medical, psychological, social, financial, legal, cultural and leisure). The main official services dealing with maltreated children are the youth offices, the young people's health services, the youth protection, child guidance, tutorship and child psychiatry services, the children's hospitals, the consultation centres under the Federal Act concerning Assistance to Victims of Offences (LAVI) and the police.

(b) Efforts have been made in the last few years to ensure better ongoing training for childcare professionals in the problems of maltreatment.[354] Efforts have also been made in the area of parent training.[355] This is on the assumption that helping and supporting parents in their task is also an excellent means of prevention and diminishes the likelihood that they will neglect or use violence against their children. Centres for marriage counselling, family planning, sexual education and guidance for mothers and children, as well as meeting points, also play an important role.

(c) Several cantons have improved their system of prevention and action in the event of child maltreatment. Examples are the persons in charge of preventing ill-treatment against children,[356] the CAN (Child Abuse and Neglect) teams,[357] the Inter-departmental Cantonal Commission for the Protection of Children[358] and inter-professional support and guidance groups dealing with the maltreatment of children.[359]

(d) The cantons regularly publish the addresses of advisory and assistance services in the press. In addition, many cantons distribute brochures and leaflets. There are specialists or services everywhere that inform about emergency telephone numbers and the numbers of specialized services dealing with the problem. Specific information is also supplied on the possibilities of assistance during regular courses on sexual education or health education.

(e) Information concerning the maltreatment and sexual exploitation of children and on children's rights and ways of defending themselves is included in the education and programmes provided at school. Child protection associations and health groups cooperate with schools to discuss the issue of maltreatment and possible remedies. The schools also run consultation services for cases of ill-treatment or, more generally, a surgery (run by nurses) ready to help maltreated children. Some cantons also take preventive measures, for instance by distributing practical brochures, holding information meetings, distributing circulars and training teachers, monitors and educators working with children. Other preventive actions include theatre plays, films[360] and roving exhibitions shown in schools.

4. Help for victims of offences and reintegration of child victims

373. With regard to help for children who have been the victims of offences, there are generally speaking two tendencies:

From a legislative point of view, towards better protection of child victims in criminal procedure, at both cantonal and federal level.

In practice, towards improved coordination between services able to provide care for child victims.

(a) Legislative measures

374. According to article 124 of the new Federal Constitution, the Confederation and the cantons are responsible for ensuring that the victims of offences against life and physical integrity obtain assistance. Fair compensation must be granted to victims who are left in difficult circumstances as a result of an offence.

375. The Federal Act concerning Assistance to Victims of Offences (LAVI)[361] fulfils the legislative mandate contained in the Constitution. It is supplemented by the Ordinance on Assistance to Victims of Offences (OAVI).[362] Assistance to victims comes under three headings: advisory assistance to victims, protection and rights of victims in criminal procedure, compensation and moral reparation. Regarding the rights of victims and their protection in criminal procedure, the LAVI allows any victim of a sexual offence the right to refuse to confront the accused, unless this is absolutely necessary from the point of view of the right of the defendant to be heard. Similarly, the authorities must avoid a face-to-face meeting between the accused and the victim when the latter so requests. The Act concerning assistance to Victims of Offences provides only minimum legislation, but is supplemented by other federal and cantonal measures (in the form of insurance, public assistance, etc.). Several moves[363]

to improve the protection of minors have been introduced in Parliament and in the Government. On 20 March 2000, the Government decided to begin drafting an amendment to the LAVI, in order to adopt new procedural provisions that would strengthen the position of the victims of sexual offences in criminal procedure vis-à-vis the perpetrator of the offence, especially in the case of minors under the age of 18.

376. Current legislation on compulsory sickness insurance (LAMal)[364] provides measures to deal with the consequences of maltreatment, both for children and for adults.

(b) Services of assistance to victims

377. All the cantons have set up one or more consultation centres providing assistance to victims. Some cantons have consultation centres that specialize in children, in women and young girls, in men and boys or in victims of offences against sexual integrity. The consultation centres are responsible in particular for providing victims with medical, psychological, social, material and legal aid. Such services are provided free of charge by the centres. They are provided in addition to assistance given by youth offices, psychological and psychiatric services, family educational guidance centres and other institutions, which also offer contact points for maltreated or abused children and young people, as well as shelter.

378. Mention should also be made of the European Convention on the Compensation of Victims of Violent Crimes,[365] which came into effect for Switzerland on 1 January 1993 and which requires that Contracting States give the maximum possible assistance in connection with the matters covered by the Convention (art. 12). To that end, each Contracting State must designate a central authority to receive, and to take action on, requests for assistance. In Switzerland, this authority is the Federal Office of Justice.

5. Statistics

(a) Statistics concerning criminal convictions in Switzerland

379. Among punishable acts against sexual integrity, acts of a sexual nature against children (art. 187) occur most frequently. In 1997, 319 persons were convicted for this type of offence. The most common sentence passed is imprisonment in such cases. In 92 of the 319 cases to which article 187 applied in 1997, violence or coercion had been used; in 19 cases, there was sexual coercion (art. 189); in 20 cases rape (art. 190) and in 20 others acts of a sexual nature committed against a person incapable of discernment or resistance. Fifteen convictions were obtained in 1997 for acts of a sexual nature with dependent persons (art. 188).

380. Girls are more often the victims of sexual maltreatment than boys. Boy victims of sexual aggressions account for 30 per cent of the total, while 82 per cent of the perpetrators are men. Paedophilia mainly comprises homosexual maltreatment of children. The age of victims indicates marked preferences, in that the greatest number are concentrated in the 12 to 16 age group.

381. According to the criminal statistics kept by the Federal Police Office, among offences reported, there were considerably more offences against the sexual integrity of children in 1997 than in 1996. This increase is attributable to the increasing awareness of the public - to which Switzerland attaches great importance - with regard to sexual abuse of children.

382. With regard to simple bodily injuries against a child of whom the perpetrator had custody or to whom he or she owed a duty of care (CP, ch. 2, art. 123 (2)), 39 convictions were obtained in 1997.

(b) Recent inquiries

383. The statistics for criminal acts do not, however, reflect the magnitude of the phenomenon. Most cases remain outside the statistics, which cover only cases falling within the scope of the Criminal Code, for which a complaint has been lodged. The records of the LAVI[366] consultation centres shed a little more light: in 1996, 3,493 persons sought assistance in a consultation centre following a sexual offence. That same year, 2,582 complained of physical injuries. Of the total, 10 per cent were children below the age of 7 and 11 per cent aged between 7 and 16.

384. Children and young people account for about a fifth of persons assisted by the consultation centres for assistance to victims (Assistance to Victims of Offences, third report of the Federal Office of Justice to the Federal Council concerning the implementation and effectiveness of assistance to victims [1993-1998], Bern, May 2000, p. 12).

385. It is generally estimated that at least one girl in 5 and one boy in 10 are the victims of sexual abuse before the age of 18. The research carried out by Dr. Halpérin et al. (1997)[367] among 1,193 young people between the ages of 13 and 17 found that 33.8 per cent of girls and 10.9 per cent of boys had been abused by the age of 16, including more specifically 60.4 per cent of girls and 30 per cent of boys with physical contact (i.e. 20.4 per cent of girls and 3.3 per cent of boys interviewed in the inquiry). Niederberger (1998)[368] in his representative inquiry conducted in German-speaking Switzerland among 980 women (aged 20 to 40) concerning experience of abusive sexual activity before the age of 16 obtained similar results. At least one woman in three has experienced either an act or a contact which may be described as sexual abuse. Too many children also suffer from negligence, socio-affective deficiencies or psychological maltreatment. All types of maltreatment, but in particular sexual abuse, imply psychic suffering.

386. While parents and other parties are more prone to fear and to recognize abuses committed by strangers and often react more appropriately (through complaints or support and care for victims), it must be said that strangers in fact account for "only" 10 per cent of all abuses. The other 90 per cent are committed by parents, relatives or persons known to the child and many remain unreported or unpunished, so that victims receive no care at all. Incest between fathers and daughters accounts for 84 per cent of abuses committed by persons close to the victim.

387. The more recent the inquiries are, the higher are the estimates of the occurrences, probably on account of heightened social recognition of the situation. Recent legal data show that abused children are being abused at an increasingly young age, although this could be explained by better knowledge of the symptoms and therefore earlier complaints.

VI. BASIC HEALTH AND WELFARE

A. Disabled children (art. 23)

1. Rights of disabled children and principle of non-discrimination[369]

388. Switzerland recognizes the right of disabled children to a full and decent life. It promotes their autonomy and participation in the active life of the community. The Federal Constitution (FC) provides for dual protection of disabled children. Under article 8 (2) of the Constitution, no person may be subjected to discrimination on account of a physical, mental, or psychological deficiency. In addition, in accordance with article 8 (4) of the Constitution, the law provides for measures to eliminate the inequalities affecting disabled persons. The latter provision comprises a veritable mandate conferred on the legislature and is addressed to all levels of State power - Confederation, cantons and communes, which must endeavour to guarantee the realization of fundamental rights[370] and also ensure that they are realized in relations between individuals.[371] In this connection, it should be noted that a federal bill on the elimination of the equalities affecting disabled persons is under preparation.[372]

2. Disability insurance measures

389. Disability insurance (AI) is a branch of social security for which every person resident in Switzerland or engaging in a gainful activity in Switzerland is obligatorily liable. Thus, children are also covered and eligible for AI benefits. In addition, disabled children are covered by sickness insurance (which, as will be seen in the observations on article 24, is obligatory for the whole population) for care not covered by disability insurance.

390. "Rehabilitation" benefits are among the benefits granted by AI. The purpose of these benefits is to restore, improve, safeguard or promote the use of the earning capacity of insured persons who are disabled or under threat of becoming disabled in the short term. AI comprises several sorts of rehabilitation benefit: medical measures, measures of an occupational nature, special school training measures, measures for disabled insured persons under the age of 20 and auxiliary resources.

391. The special school training measures[373] for insured persons under the age of 20 consist of subsidies for special school training for insured persons under 20 who, because of their disability, are unable to attend State school or cannot be expected to attend State school. The training comprises normal schooling and, for minors incapable of - or having difficulty in -

assimilating the basic school disciplines, measures intended to develop either their manual dexterity or their ability to perform everyday acts or establish contacts with those around them. The subsidies comprise contributions to the cost of schooling and meals, and special allowances to cover the cost of transport to school, or for pedagogical and therapeutic measures necessary in addition to the education provided at the special school. Disabled children who have completed their second year and are not placed in an institution for special school training or for rehabilitation measures are entitled to a contribution to the cost of the special care they are receiving.

392. Measures of an occupational nature granted to all insured persons, including young people, comprise:

Vocational guidance to insured persons whose disability makes it difficult for them to choose an occupation or to continue their previous activity;

Coverage of additional costs caused by the disability for initial vocational training and further vocational training or preparation for auxiliary work or work in a sheltered workshop;

Placement in a new occupation if this is necessary on account of the disability;

Re-education in the same occupation;

Action to find appropriate employment;

Grant of capital on certain conditions, in order to enable the insured person to undertake or develop an independent activity, and to cover the cost of any structural alterations to the workplace made necessary by the disability.

393. In addition, AI grants auxiliary resources as needed by the disabled person in order to engage in a gainful activity, do his or her normal work, study or learn a trade, or for purposes of functional habituation. These include prostheses, artificial legs, hearing aids, artificial eyes, guide dogs for blind persons, wheelchairs, motorized vehicles and auxiliary resources for work purposes.

394. Insured persons are entitled to rehabilitation measures as soon as they are needed on account of their age or state of health. Subject to different regulations contained in various international conventions, foreigners under the age of 20 and having their habitual residence and domicile in Switzerland must fulfil the following additional conditions at the time when the rehabilitation measure becomes necessary:

Either they have paid a full year's contributions or have had 10 years of uninterrupted residence in Switzerland; or

They were born disabled in Switzerland or have been living in Switzerland without interruption for at least one year or since their birth, and their father or mother is insured and, if a foreigner, has paid contributions for at least a full year or has lived in Switzerland for 10 years without interruption.

395. Mention should also be made of benefits under LAI article 74,[374] under which associations providing private assistance to disabled persons and organizations training specialists in occupational rehabilitation receive subsidies for the following activities:

Advice and assistance to disabled persons and their relatives;

Special courses to increase disabled persons' skills;

Training and further training for personnel providing occupational assistance, training and rehabilitation for disabled persons.

396. Of course, children also benefit from these measures, particularly with regard to training and leisure activities, which contribute greatly to their more effective social integration.

3. Measures at the cantonal level

397. The assistance offers described below are organized and managed in close collaboration with the disability insurance scheme.

398. In all the cantons, specialized services, (paediatricians, paediatric hospitals, nurses for infants, counselling services for mothers) deal with early identification and assistance to children affected by a disability, and with counselling to be given to their parents. Children having special needs are currently cared for and supported by highly specialized early education services, both mobile and fixed. Disabled children of school age continue to receive mobile or fixed care (therapeutic teaching measures, speech therapy, psychomotor care, treatment of dyslexia). Account is also taken of special needs through special classes or smaller classes, or placement in specialized homes where they are taught. In this connection, attention should be drawn to a growing tendency to integrate disabled children into normal classes.[375]

399. Recognized assistance measures are free of charge for families with disabled children. In the case of residential institutions, parents contribute towards accommodation costs (e.g. maintenance).

400. All the cantons have legal provisions relating to the monitoring and training of disabled children, whether it be a law on the protection of young people, an appropriate article of school legislation, a law on special schools or a law on disabled persons.[376]

401. Moreover, in all regions of the country, regional or national associations work in the interest of particular groups of disabled persons (e.g. diabetes, autism, deafness, blindness, epilepsy, etc.).

402. By way of example, mention may be made of a few special measures taken at the cantonal level:

The "Independence and assistance services" pilot project has been set up in the cantons of Vaud and Zürich. Thanks to private personnel, namely personal "assistants", physically disabled persons are able to live outside an institution. They themselves organize the assistance they need. Through this project, these persons are taking an enormous step towards independence and individual responsibility;

The "Special needs of young children" project is based on collaboration between the Vaud branch of Pro Infirmis (see below) and the Vaud University Hospital Centre (CHUV). The service assists an average of 400 families a year, including about 80 newborns. Family monitoring is necessary at the time of hospitalization of very premature infants or in the case of disabilities reported at birth. The work comprises three main facets: counselling, informing and guiding parents. The aim is to inform them of their entitlements vis à vis social insurance, the resources available (home help), the institutions providing early care and pre-school institutions. The project social workers assist the families until the child reaches the age of 7 or 8 since another important service for families, the Mobile Education Service (see below), does not deal with children below school age, i.e. about 5. In addition, children who have problems other than disabilities diagnosed at birth at the CHUV, e.g., children whose deficiencies become apparent at a later stage, are covered;

A similar service has been provided since 1989 between Pro Infirmis (Aargau) and Aargau cantonal hospital (some 130 families are currently receiving assistance);

A research project entitled "Partnership between parents of disabled children and professionals: experiences and expectations of parents" is being carried out in the Faculty of Psychology and Education Sciences at the University of Geneva, in the context of the National Scientific Research Fund (FNRS) and with the participation of the Lausanne School of Social and Pedagogical Studies. This study is geared to the standpoint of the parents of disabled children in their relations with the various specialists who become involved in care for their children. The study will attempt to identify their experiences and desires, the extent of their difficulties, and the strategies put into effect in order to overcome them.

403. The cantons, like the Federal Office for Social Insurance (OFAS), also support private organizations, which are very active in this field. By way of example, reference may be made to the following organizations;

Through a network of 50 services in all regions, Pro Infirmis counsels disabled persons and their relatives. As an umbrella association, it supports and coordinates a large number of Swiss and inter-cantonal associations providing specialized assistance and mutual assistance. Pro Infirmis offers services which include transport, advice on construction, home learning, home therapy groups, and cultural and recreational clubs;

Insieme is the Swiss Federation of associations of parents of mentally disabled persons. It was set up in 1960 and comprises 56 regional and cantonal associations totalling some 30,000 members (parents, specialists, friends). Insieme represents the interests and defends the rights of mentally disabled persons and their relatives vis-à-vis federal departments and authorities and umbrella organizations providing private assistance to disabled persons. It informs the general public of the needs of mentally disabled persons and does everything possible to integrate these persons within society. It designs and supports projects which aim at improving the quality of life and developing the autonomy of mentally disabled persons. It is supported by the Federal Office for Social Insurance and recognized by the Central Bureau for Charitable Activities (ZEWO);

The Mobile Education Service (SEI) offers home help for pre-school children suffering from development difficulties. This service is provided by doctors and nurses, social workers, psychologists, teachers and representatives of various other specialized services. Cooperation begins with the agreement of the parents. When contacts have been made, the specialized teacher will visit the family regularly and will thus be able to get to know the child and, with the parents, observe his or her abilities in various fields. This observation period will make it possible to promote the child's development, in accordance with jointly defined objectives, and with appropriate means. The SEI's work generally continues until the child enters a specialized institution: day nursery, kindergarten, special or public education class. Throughout the period of care, the specialized teacher works with all the persons dealing with the child. SEI teachers hold a special education diploma, have received supplementary training in early education and have experience in the area of special education. They are all members of the SEI Teachers' Association for French-speaking Switzerland and receive continuing training. Every SEI teacher is attached to a specialized school;

In Switzerland there are several mixed day nurseries where disabled children are integrated. The originality of the "Ensemble" kindergarten project in Geneva lies in the fact that it offers a mixed environment with an ordinary kindergarten alongside a specialized kindergarten, with group activities in addition to the free intermingling of disabled and ordinary children, in accordance with the children's wishes and capacity.

B. Health and health services (art. 24)

1. Medical assistance for all children

404. In Switzerland, the right to enjoy the best possible physical and mental health is guaranteed both by the Federal Constitution and by article 12 of the International Covenant on Economic, Social and Cultural Rights. In conformity with article 41 (1) (b) of the Constitution, the Confederation and the cantons undertake, over and above individual responsibility and private initiative, to ensure that every person receives the care necessary for their health.

It should also be mentioned that the constitutional right guaranteeing the individual the right to minimum conditions of existence[377] also encompasses the minimum medical assistance necessary for decent survival.

405. It is social security, and more particularly the sickness branch, which guarantees realization of the right to health care. All persons resident in Switzerland are protected under obligatory sickness insurance as regards the provision of medical and pharmaceutical care as defined by law (ambulatory and hospital treatment, in particular). This social insurance (governed by the Federal Act concerning Sickness Insurance (LAMal), of 18 March 1994)[378] comprises the compulsory insurance for care following a sickness or accident or in the case of maternity. The whole population should in practice be insured thanks to the supervisory role performed by the cantons, automatic affiliation if necessary, the impossibility of leaving one insurer without being taken over by another and the financial "penalty" laid down in the event of late affiliation. The relevant provisions also concern children who, like other persons, are insured on an individual basis. Persons required to insure themselves or insure a minor have a period of three months in which to do so as from the time they take up residence (or from the date of birth) in Switzerland. If this time limit is complied with, the insurance operates retroactively.

406. The financing of health insurance is based primarily on the premiums paid by insured persons and on their participation in costs (deductible and percentage contribution). Every insurer must itself set the premiums necessary to cover its expenditure, and insurers may not grade premiums according to the age, state of health, sex or income of the insured person. However, children enjoy more favourable provisions than adults. Insurers must fix lower premiums for insured minors. As to the participation of insured persons in costs, no deductible (fixed amount to be paid by the insured person) is charged and the maximum amount of the percentage contribution towards costs is Sw F 300 a year (as opposed to Sw F 600 for adults). Children from the same family who are insured with the same insurer together pay a maximum of Sw F 830. The insurer's contribution to the purchase of corrective lenses amounts to Sw F 200 every three years for adults and Sw F 200 every year for children up to the age of 18.

407. In conformity with the requirements of the Convention, health insurance for children covers preventive medical measures, such as the examination of the health and development of pre-school children, certain tests, and certain vaccines and boosters.

408. In addition, the LAMal has expressly recognized the need for access to information on health for all groups within society, establishing in article 19 the obligation on insurers to manage jointly and with the cantons an institution whose purpose is to initiate, coordinate and evaluate measures designed to promote health and prevent diseases. The Swiss Foundation for the Promotion of Health, whose headquarters are in Lausanne, has a national role in informing the public, economic milieux and institutional representatives of society, making them aware of what is involved in health and motivating them to undertake to promote health. It designs and directs national programmes in priority areas, while at the same time encouraging and coordinating cooperation between all the parties concerned.

2. Promotion of health and other measures taken

(a) Promotion of health in Switzerland

409. (i) In order to improve and intensify coordination in the promotion of health among the various partners concerned (Confederation, cantons and private organizations), they established, in 1989, the Swiss Foundation for the Promotion of Health, an institution responsible for implementing health promotion strategies.[379] The Foundation develops and implements priority programmes. Particular attention should be drawn to the priority programmes relating to "Physical activity, diet and relaxation",[380] and the programme on "Adolescents and young adults". The implementation of these programmes began in 1999 and will continue until 2004.

(ii) The cantonal public health or public education authorities organize visits to school doctors and dentists for children attending schools or nurseries. The check-ups are in principle compulsory. Parents can, however, choose to have their child examined by the family doctor or dentist and must in this case send the school doctor or dentist a certificate stating that their child has received the necessary examinations and treatment.[381] Thanks to the treatment of children and young people by school dentists and the schools' commitment to impress upon children the importance of daily dental care, at the theoretical and practical levels, Switzerland occupies a leading position in this area.

(iii) All the cantons state that a healthy life is one of the essential objectives of compulsory schooling and that health is therefore rightly included in curricula. During school years, the various subjects in this area are always given degrees of priority, depending on the age of the pupils, whether it be in the teaching of gymnastics or sport, ethics, health education and sex education, home economics or the natural sciences.

(iv) A large number of prevention-oriented events geared to the various age groups are held in all cantons. The subjects of dependency (legal and illegal drugs), diet, sexuality, AIDS, etc. are dealt with, often in close cooperation with the competent specialized services (dependency prevention services, AIDS prevention centres, family counselling services, health services and many others).

(v) Following the "Youth health" pilot project (1992-1995), the Federal Office of Public Health (OFSP), in cooperation with the Conference of Cantonal Directors of Education (CDIP), initiated the "Schools and health" framework programme (1997-2002). This programme, which is currently underway, in March 1999 comprised 16 projects conducted in all regions of the country. The OFSP has invested a total of Sw F 4 million in the development of projects geared to needs and targeted at improving education and promotion in the area of health in school. The programme is aimed at providing support for the efforts of schools as places of learning and experience, with a view to the encouragement of the promotion of health. These projects may relate to the following subjects: school environment,

psychological, social and physical well-being, prevention of dependency, sex education, prevention of violence in schools, prevention of the ill-treatment and sexual exploitation of children, environmental effects on human health, prevention of school drop-out, and interruption of training.

(vi) In 1992, WHO, the Council of Europe and the European Union initiated the European Network of Health-Promoting Schools; since 1993, Switzerland has been participating in this joint project along with 37 other countries. In March 1999, the Swiss network comprised 73 schools, (41 in German-speaking Switzerland, 30 in French-speaking Switzerland and 2 in Ticino) covering a total of 21,200 pupils, 1,120 classes and 2,430 teachers. A very large number of schools are currently taking steps to join the network.[382]

(vii) Mention should also be made of the numerous offers of documentation and in-house training in the area of health promotion available to teachers at the canton, inter-cantonal and national levels.

(b) Paediatricians

410. In Switzerland in 1997, there were 605 doctors specializing in "child and adolescent health" and qualified as FMH (Swiss Medical Association) specialists. In the same year there were also 265 child psychiatrists and psychotherapists and 25 surgeons specializing in child surgery.[383]

(c) Vaccination of children

411. There are no statistical data on total vaccinations in Switzerland. However, two surveys of 400 children throughout Switzerland in 1991 and 1998 showed that 92-95 per cent of children between the ages of 27 and 36 months had been vaccinated at least three times against diphtheria, tetanus and poliomyelitis and 88-89 per cent against whooping cough. In 1998, 77 per cent had been vaccinated at least three times against haemophilus influenzae (meningitis, epiglottitis). In 1987, a campaign of vaccination against measles, mumps and rubella was launched, and 79-82 per cent of children were vaccinated against these diseases. Since 1998, OFSP has recommended the general vaccination of adolescents aged 11-15 against hepatitis B. In addition, all the cantons conduct vaccination campaigns.

(d) Children and hospitals

412. The Swiss Association for Children in Hospital[384] is affiliated to the international umbrella association, the European Association for Children in Hospital. At present, four regional groups - each covering several cantons - have been established; in seven other cantons, contact addresses are available. The Association's activities, in addition to parent guidance and support, cover the following main areas:

Preparation of children for hospitalization: The Association supports the initiatives of teachers, who present this subject as a form of play activity in their classes. It also organizes visits to hospitals with parents and their children;

Information and counselling;

The Association ensures that hospital is a welcoming place for children: this ranges from the appearance of the child's room to representing children in discussions on quality standards for hospitals.

3. Mortality among children and young people in Switzerland

413. The infant mortality rate is very low and has been characterized by a very sharp decrease since the beginning of the twentieth century. Whereas there were 6.2 deaths for every 1,000 live births in 1986, infant mortality declined to 5.8 in 1992 and 4.7 in 1997. Most of the deaths occur during the first week or even during the first 24 hours of life, and are due primarily to perinatal disorders. Congenital anomalies and sudden infant death syndrome constitute the other chief causes of infant mortality both during the first month and during the first year of life.

414. The importance of birth weight for a newborn's chances of survival has been known for a long time. The average birth weight calculated for all births is 3,322 g. The average birth weight of stillborns and infants dying during their first year of life remained stable during the 1980s and 1990s. The proportion of infants with a weight of less than 2,500 g is 5.4 per cent and that of infants under 1,500 g is 0.8 per cent. Because of the hormonal treatment followed by couples experiencing difficulties in having a child, the number of multiple births has increased considerably (by 29 per cent between 1986 and 1992).[385]

415. The mortality rate for children between the ages of 1 and 14 is appreciably lower than during the first year of life and is among the lowest in Europe. Trauma constitutes the most frequent cause of death, whether due to domestic accidents (especially between the ages of 1 and 4) or road accidents (between 4 and 14). Congenital anomalies and malignant tumours are the other chief causes of infant mortality.

416. Whereas mortality has declined sharply in children, it has fallen only slightly in young people between the ages of 15 and 19. In this age group, violent deaths account for approximately three quarters of all deaths: road accidents and leisure-related accidents constitute the first cause of mortality, followed by suicide. The suicide rate is four times higher among boys than among girls.

417. In order to tackle the problem of suicide, in 1992 and 1995 the FMH and the Federal Office of Public Health published for general practitioners a brochure entitled "Crisis and suicide", which was intended to help them, inter alia, to recognize crisis situations that might lead to suicide and to take appropriate action. In the canton of Geneva, a suicide prevention campaign aimed at teenagers was set up in October 1996. This is the only programme in Switzerland set up within a university hospital. Consultations always take place on a voluntary basis and the persons closest to the patient are also involved. Associations such as La main tendue are also very active in suicide prevention in Switzerland; this association provides a 24-hour helpline to assist people in crisis.

418. The Swiss Accident Prevention Bureau has initiated numerous programmes aimed at preventing various types of accident: leisure, sports, traffic, house, garden, etc. The means of action are very varied; they may consist of brochures distributed to parents, children and young people, school visits, audio-visual material, children's games aimed at making them attentive to possible dangers, etc.

419. Mortality rates by main causes of death and by age for boys in 1995 (mortality rate per 100,000 persons):

	Under 1 year	1-4 years	5-9 years	10-14 years	15-19 years
All causes of death	5.6	36.5	16.9	22.2	81.4
Circulatory system	0.1	0.6	0.5	0.5	2.9
Respiratory system	-	1.1	-	0.5	1.5
Infectious diseases	0.1	2.3	1.9	0.5	1
AIDS	-	1.7	0.9	0.5	0.5
Tumours, all kinds	-	2.3	3.3	4.8	6.4
Congenital anomalies	1.8	5.1	1.9	2.4	3.4
Perinatal mortality	2.1	-	-	0.5	0.5
Accidents and trauma	0.1	16.5	7	9.6	49.1
Accidents, all kinds	0.1	14.8	7	8.2	31.4
Road accidents	-	3.4	3.3	1.9	15.2
Suicide	-	-	-	1.0	15.7

For children under the age of 1 year, mortality rate per 1,000 live births.

420. Mortality rates by main causes of death and by age for girls in 1995 (mortality rate per 100,000 persons):

	Under 1 year	1-4 years	5-9 years	10-14 years	15-19 years
All causes of death	4.4	18.6	13.3	11.2	33.5
Circulatory system	0.1	1.2	0.5	1.0	1.5
Respiratory system	-	0.6	0.5	-	0.5
Infectious diseases	0.1	3.0	2.0	-	0.5
AIDS	-	0.6	1.5	-	-
Tumours, all kinds	0.1	2.4	1.0	4.1	2.6
Congenital anomalies	1.4	1.2	-	0.5	2.1
Perinatal mortality	2.0	-	-	-	-
Accidents and trauma	0.1	4.2	5.9	2.0	18.0
Accidents, all kinds	0.1	4.2	5.9	1.5	10.3
Road accidents	-	1.8	3.0	1.5	5.2
Suicide	-	-	-	0.0	7.2

For children under the age of 1 year, mortality rate per 1,000 live births.

4. Maternal mortality, prenatal and post-natal care[186]

421. In Switzerland, health care for expectant and new mothers is provided under the LAMal. The specific maternity benefits include check-ups, by a doctor or midwife or prescribed by a doctor, during and after pregnancy, participation in a prenatal class given by a midwife, birth in the home, in the hospital or in a clinic, and also the attention of a doctor or midwife and necessary guidance on breastfeeding. No contribution to costs may be demanded in respect of maternity benefits.

422. The maternal mortality rate in Switzerland is very low; it nevertheless fluctuates from one year to another insofar as it is based on the number of live births. Maternal mortality increases with age and is higher for women living in rural areas.

423. Maternal mortality per 100,000 live births:

1990	5.96
1991	1.16
1992	4.6
1993	5.97
1994	3.62
1995	8.52

424. The number of perinatal examinations stands at 4.5 for women between the ages of 15 and 34 and 2.9 for women between 35 and 49. This gives an average of 4.1 perinatal examinations for all women between 15 and 49. Ninety-nine per cent of births take place in hospital or in a clinic.

425. According to a 1994 survey, Caesarean births accounted for 16 per cent of all births in Switzerland. Lower rates of 10 to 14 per cent were recorded for mothers under the age of 30, whereas the Caesarean rate for women over 35 was almost 22 per cent.

426. In 1997, the average age of the mother at the birth of the first child was 28.3 years. In 1990, it had been 27.6 years.

5. Nutrition

(a) Breastfeeding

427. Since, in recent years, more attention has been paid to the significance of breastfeeding for the baby's health and mothers are better prepared for breastfeeding, the number of breastfeeding mothers has increased since 1979. After birth, 92 per cent of women in Switzerland begin breastfeeding; after three months three quarters are still breastfeeding (62 per cent of these exclusively breastfeeding). After six months, 41 per cent are still breastfeeding, including 11 per cent only breastfeeding. It should be further noted that since 1992 a working group of the Swiss Committee for UNICEF has been endeavouring to promote breastfeeding and to implement in Switzerland the UNICEF/WHO initiative on baby-friendly hospitals.

(b) Nutrition in young people

428. Adolescence is sometimes characterized by a whole range of psycho-social problems which are reflected in depression, bulimia or anorexia and are related to the problems specific to this period of life (biological changes, growing independence vis-à-vis parents, plans for the future). According to the fourth report on nutrition in Switzerland, published in May 1998, some adolescents reveal signs of deficient diet, both qualitatively and quantitatively. Recent scientific data indicate that 8 per cent of girls between the ages of 14 and 19 and 2 per cent of boys in the same age group show unusual dietary behaviour. Anorexia as such affects one woman out of 100 and bulimia one out of 33.

429 In the context of the Swiss "Health in schools" network, measures are being taken to induce young people to adopt a healthy diet; action is also taken at the cantonal level. On the basis of the fourth report on nutrition in Switzerland, a nutrition policy is currently being formulated.

6. Sexual health

430. Guidance on sexual health matters is largely provided by the family planning centres and cantonal AIDS units as a supplement to the work of doctors. In addition, sex education classes are generally organized in schools. Most young people therefore have access to information in this field.

(a) Sex education

431. Children receive introductory sex education in all cantons during their compulsory schooling. This education may be given at all levels of public schooling, in the light of the age and situation of the pupils concerned. Priority is, however, given to education at the junior secondary level.

432. In German-speaking Switzerland, this education is chiefly provided by class teachers and specialist teachers of both sexes. In many cases, these teachers have had supplementary training or taken further training courses. According to need, external specialists (doctors, family planning services) are sometimes called in. In French-speaking Switzerland, it tends to be the specialized services which provide sex education in the context of a predetermined programme.[387]

(b) Prevention of unwanted pregnancies

433. The prevention of pregnancies is dealt with in the context of sex education at school and the very widespread anti-AIDS campaigns (see below).

434. All the cantons have counselling services for questions relating to sexuality, pregnancy, marriage and the family.[388] These services are, of course, available to all young people and provide information to the public and in schools, youth clubs, homes associations, etc.[389]

435. In addition, pregnant under-age girls can at any time contact the social services of communes, regions and districts, and indeed tutorship authorities, in order to obtain advice, follow-up and practical assistance. Several cantons receive and assist under-age mothers in homes specially designed for this purpose, as in the cantons of Obwalden, Bern and Ticino.

436. Quite often, private organizations offer services in this area, e.g. the marriage and family guidance services and guidance on sexual matters in Glarus, Pro Familia in the canton of Vaud, SOS Futures Mères in various French-speaking cantons, the Verein Mütterhilfe in the canton of Zürich, and many others.

437. Statistically speaking, the number of under-age pregnant girls no longer represents a serious social problem today, and so precise statistics on this subject are not generally available. Zug, Schaffhausen and Aargau have a few isolated cases. Thurgau, Uri and Schwyz mention one or two cases a year. Fribourg, Neuchâtel and Glarus cite 3 to 5 cases a year. Aargau had 20 cases in 1998. In 1996, Geneva reported 22 mothers under the age of 18. Zürich can only give the number of mothers under 20 (200 a year on average, 206 in 1997). In Solothurn in 1998, there were 45 mothers aged between 15 and 19, of whom 20 were Swiss and 25 of foreign nationality.

438. Contraceptives are easily available and are, comparatively speaking, widely used in Switzerland. The contraceptive methods most commonly mentioned by women under 20 are the condom (77 per cent), followed by the pill (67 per cent). In 1996, however, there was a disturbing finding that the third most commonly used method among women under 20 was coitus interruptus (19 per cent). Less frequently mentioned were the Ogino-Knaus method (11 per cent) and spermicides (5 per cent). Only 56 per cent of girls aged 15 completing an apprenticeship and having sexual relations used a method of contraception, whereas this proportion was 100 per cent for schoolgirls of the same age.[390]

439. There are also certain groups of young people who need to be better informed, notably groups of immigrant women. The Federal Office of Public Health, in conjunction with the Swiss Family Planning and Sex Education Association, has recently initiated an information programme for immigrant women, which began in June 1999. This comprises a "Guide on sexual and reproductive health resources for use by immigrant women living in Switzerland".

7. Action to combat AIDS

(a) Statistical data

440. At the end of 1997, the cumulative proportion of AIDS cases per 100,000 inhabitants was 86.4. The increase in AIDS had nevertheless slowed in Switzerland in the early 1990s. Since 1995, the annual number of new AIDS cases has sharply declined. In 1994, when the highest rate was reached, some 700 new cases of AIDS were diagnosed. In 1997, the figure was 390.

441. Between 1983 and 1987, 6,097 cases of AIDS were reported to the Federal Office of Public Health; 4,690 AIDS sufferers have already died. The number of new infections diagnosed is in decline, this trend being particularly noticeable in self-injecting drug users and in

men having sexual contacts with other men. According to estimates, the number of persons infected since the beginning of the epidemic is between 15,000 and 25,000 (including approximately 5,000 persons who have died).

442. Up to the end of 1997, reported cases of AIDS affected 1.4 per cent of children under 10 (83) and 0.3 per cent of young people aged between 10 and 19 (17). Of the 20,000 or so positive tests reported up to the end of 1997, 2.5 per cent concerned children aged under 10 and 2 per cent young people between 10 and 19. In children and young people suffering from AIDS or being seropositive, both sexes were similarly affected. The current figures do not permit any conclusions regarding an increase or decrease over time in cases of AIDS or seropositivity in children.

(b) Prevention and assistance

443. Since the emergence of the HIV/AIDS epidemic, prevention campaigns have been undertaken throughout Switzerland. Three goals have been defined in the HIV/AIDS prevention programme: prevention of new infection, reduction of the negative effects of the epidemic and promotion of solidarity.

444. AIDS prevention takes place at three levels of intervention and activity. The first level concerns the population as a whole; this is the "STOP AIDS" campaign. The second level concerns information and prevention campaigns intended for high-risk population groups (e.g. homosexuals, heterosexual and bisexual men, self-injecting drug users, prostitutes). Lastly, the third level targets individuals through doctors, social workers and various organizations.

445. A legal basis for the prevention of AIDS in schools has been created in all cantons, thereby enabling sex education and AIDS prevention classes to be held. At present, with a fair level of success, many cantons have integrated these subjects into their curricula. Since 1996, the Swiss "Health in schools" network has offered an AIDS action programme.

446. As regards prevention geared to young people, attention should be drawn to:

"Funtasy project", a participatory project supplementing the STOP AIDS campaign: the objective of this project to induce young people in all regions of the country to think about the subject of HIV/AIDS during their leisure time and in the light of their needs. This subject will be treated more broadly and linked to other subjects of analysis: sexuality, dependence, violence, etc. Adults acting as focal points will motivate, monitor and support young people in this process;

The "close to risk" youth project:[391] the aim is to encourage, finance and monitor projects for young people "close to risk" in the priority area of AIDS prevention and in the area of health promotion in general.

447. Schools are also making systematic efforts in the area of AIDS prevention. In all cantons, pupils below and above the age of 16 receive information on AIDS. This subject is taken up in accordance with the curriculum for the subjects of ethics, health or sex education. In most cases, this information is provided in the first year of secondary school, but, depending

on circumstances, it may already have been taught in primary school. Outside specialists participate in these classes. Some cantons also work with private associations which conduct prevention campaigns in schools.[392]

448. The AIDS & KIND Foundation supports children who are infected by the AIDS virus or one of whose parents is infected. The assistance mainly takes the form of financial contributions to the medical and/or psychosocial supplementary follow-up of children infected by AIDS, direct financial support for parents, organization and co-financing of courses of treatment or residential rehabilitation for affected children, spiritual care, and the offer or co-financing of legal support, for example in order to overcome problems relating to education, schooling or housing.[393]

(c) HIV and pregnancy

449. Thanks to the association of antiretroviral treatment in seropositive pregnant women and a Caesarean at the time of birth, HIV transmission from mother to child can be greatly reduced.

8. Prohibition of female genital mutilation

450. All types of female genital mutilation (even the least invasive) are forbidden under Swiss legislation. In conformity with Swiss criminal law (CP, art. 122), they are classified as acts causing wilful grievous bodily harm and are prosecuted automatically; they carry a penalty ranging from ordinary imprisonment for a term of between 6 months and 5 years to rigorous imprisonment for a maximum of 10 years.

451. The elimination of negative cultural attitudes and practices against girls constitutes one of the strategic objectives of the Swiss plan of action for follow-up to the Fourth World Conference on Women in Beijing (L. The girl child, strategic objective L.2). In the context of the follow-up to this Conference, a study should be undertaken in Switzerland to determine whether such mutilation is practised in the country and if measures need to be proposed.

452. It should also be emphasized that, at the international level, Switzerland is actively engaged in trying to bring an end to the sexual mutilation of girls and women. At the multilateral level, Switzerland supports campaigns for the eradication of such practices and manifests its firm commitment both in international deliberations and in international agencies working to this end (UNICEF, UNFPA, UNIFEM, WHO). In the area of bilateral cooperation, and taking account of the sensitivity of the subject, this is included in the more global context of dialogue on national polices and integrated in bilateral programmes on reproductive health, education and promotion of the rights of the individual, particularly in Africa. Lastly, Switzerland supports initiatives by local organizations aimed at eliminating such practices (e.g. in Mali, Tanzania and Niger) through awareness-raising and information campaigns.[394]

9. Health and environment

453. Following the United Nations Conference on Environment and Development (UNCED), which was held in Rio in 1992,[395] the Federal Office of Public Health (OFSP), in conjunction with the Federal Office for the Environment, Forests and the Countryside, established a working group comprising representatives of federal, cantonal and communal bodies and NGOs.

A Health and Environment Service was set up within the OFSP. In 1997, this working group submitted an environment and health action plan, which is limited to three main areas, namely, nature, mobility and housing; these areas are regarded as being permanently related to the well-being of the population. It will also serve as a basis for implementing practical measures.

454. As regards mobility, the aim is to ensure that the adverse effects caused by motorized transport today are reduced by the year 2007 through a significant decrease in emissions harmful to health and the environment, and an increase in the share of non-motorized transport. These measures should inter alia, help to reduce the prevalence of respiratory problems in children.

10. International cooperation

455. Switzerland, through the Agency for Development and Cooperation within the Federal Department of Foreign Affairs, mainly pursues a holistic health policy aimed at improving the state of health of all population groups in need of help. Switzerland is a member of WHO, to which its ordinary contribution amounted to approximately US$ 4.9 million in 1998; its contribution to the International Agency for Research on Cancer amounted to approximately US$ 900,000. In the context of WHO's special programmes, Switzerland supports the Child Health Development Programme, which is aimed at combating the most deadly diseases in young children, diarrhoea and respiratory infections, in the amount of Sw F 1 million a year, half of which is targeted more specifically at the "Integrated Management of the Sick Child" initiative.

456. Switzerland provides substantial aid to improve the situation of children in developing countries through its contribution to UNICEF. This amounted to Sw F 17 million in 1998. Switzerland has also participated in the UNICEF programme on the improvement of the situation of young girls in Pakistan.

457. In 1998, Switzerland contributed Sw F 2.2 million to United Nations activities in the area of AIDS.

458. In view of the need to act for the welfare of children, Switzerland and various mutual assistance organizations have met in a working group to analyse the numerous problems confronting children, mainly in the countries of the South. At the beginning of June 1997, a joint platform was published under the title "Children in the world: The future begins now".

C. Social security and childcare services and facilities (arts. 26 and 18 (3))

1. The nine branches of social security

459. The various branches of Swiss social insurance cover the nine branches of social security within the meaning of international law: medical care, sickness benefits, unemployment benefits, old-age benefits, benefits in the event of industrial accident or occupational disease, family allowances, disability benefits and survivors' benefits. Maternity benefits are currently granted in conformity with the LAMal.

460. It is compulsory for children to have medical insurance, which is an individual insurance covering the whole population and is governed by the above-mentioned LAMal.[396]

461. The daily benefit insurance in the event of illness is optional at the federal level; it is also governed by the LAMal. Every person resident or engaging in a gainful activity in Switzerland over the age of 15 but under the age of 65 may conclude a daily benefit insurance covering sickness and/or maternity.

462. Unemployment insurance is obligatory once a person engages in a gainful activity.

463. The accident and occupational-disease insurance is obligatory for all employees working in Switzerland, including home workers, apprentices, trainees, volunteers, and persons working in vocational institutions or sheltered workshops.

464. Old-age, disability and survivors' benefits are granted in Switzerland under several federal laws which establish a "three-pillar" social security system. The first pillar is represented by a basic insurance covering the whole population, the second an occupational insurance covering only employees on an obligatory basis, and the third an individual form of social security. Children are covered by the basic insurance.[397] Only employees over the age of 17 who receive from a single employer an annual income of over Sw F 24,120 have to pay the compulsory occupational old-age, survivors' and disability insurance.

465. As regards the system of family allowances, it is shared among 26 different cantonal regimes and a federal family-allowance regime in agriculture (see explanation below). The federal regime protects agricultural workers and self-employed farmers whose annual income does not exceed Sw F 30,000 (this income limit is increased by Sw F 5,000 for every dependent child), while the cantonal family-allowance regimes protect all non-agricultural employees. Some cantonal regimes also provide child benefits for self-employed non-agricultural workers or persons not engaging in a gainful activity when their income does not in principle exceed certain limits. Several cantons pay agricultural workers and self-employed farmers family allowances supplementing those provided by the federal regime.

2. Social security benefits

466. Children are therefore included in the social protection system and are eligible, where appropriate, for specific benefits. These benefits are intended directly for the child and are aimed at compensating for the loss of family support (orphan's benefits), or are paid in the light of a child's dependency (child benefits supplementing disability or old-age benefits and family allowances).

467. The basic old-age and survivors' insurance (AVS) provides for child benefits and orphan's benefits. Persons in receipt of an AVS old-age benefit are entitled to a benefit for every child who, on the death of these persons, would be entitled to an orphan's benefit. Children whose father or mother has died are entitled to an orphan's benefit. In the event of the death of both parents, they are entitled to two orphan's benefits. Foundlings are also entitled to an orphan's benefit. Foster children are entitled to an orphan's benefit in the event of the death of

the foster parents if the latter have borne, freely and over a substantial period, the cost of maintenance and education. Entitlement to an orphan's benefit lapses on the eighteenth birthday (at age 25 if the orphan is receiving training) or in the event of the orphan's death.

468. The basic disability insurance (AI) provides that persons eligible for a disability benefit are entitled to a benefit for each child who, in the event of their death, would be entitled to the AVS orphan's benefit.

469. The minimum child benefit and orphan's benefit is Sw F 420 a month and the maximum Sw F 804 a month; in the event of entitlement to two benefits for a child or orphan, the amount of the two benefits may not exceed Sw F 1,206 a month (situation as at 1 January 2000).

470. In the context of the occupational old-age, survivors' and disability insurance, persons in receipt of a disability benefit are entitled to a supplementary benefit for each child who, in the event of their death, would be entitled to an orphan's benefit. The children of the deceased insured person are entitled to an orphan's benefit. This is also the case with foster children when the deceased was required to provide for them. Entitlement to the orphan's benefit lapses in the event of the orphan's death or when he or she reaches the age of 18. It continues until a maximum age of 25, for as long as the orphan is pursuing studies or an apprenticeship or if the orphan suffers from at least two thirds disability and is not yet capable of engaging in a gainful activity.

471. In the area of accident insurance, the children of a deceased insured person are entitled to an orphan's benefit. If they have lost one of their parents, they are entitled to an orphan's benefit in respect of the father or the mother. If they have lost both parents or if the surviving parent subsequently dies or if the filiation existed only with respect to the deceased insured person, they are entitled to an orphan's benefit in respect of the father and the mother. Entitlement to the orphan's benefit lapses when the orphan reaches the age of 18 or in the event of the orphan's death or the redemption of the benefit. For children pursuing studies or an apprenticeship, entitlement to benefit continues until the end of the studies or the apprenticeship, but never beyond the age of 25.

472. The benefit for an orphan who has lost his or her father or mother amounts to 15 per cent of the insured income (maximum of Sw F 1,335 a month) and the benefit for an orphan who has lost both father and mother amounts to 25 per cent of the insured income (maximum of Sw F 2,225 a month) (situation as at 1 January 2000).

473. In the event of entitlement to a benefit under several headings, anti-cumulative provisions exist.

474. Family benefits in the agricultural sector are paid as from the first child. All children for whose maintenance the beneficiary provides are eligible for benefits (children of married parents, children of unmarried parents, adopted children, children of the spouse, foster children), as are the brothers and sisters of the beneficiary for whose maintenance he or she largely provides. The federal regime also pays household benefits to employees living with their spouse or with their children, to employees living in the same home as the employer and whose spouse

or children have their own household, for whose maintenance the employee must provide, and to employees who, with their spouse or their children, live in the same home as the employer. Only wage earners may claim household benefits.

475. The child benefits amount, in the lower regions, to Sw F 160 a month for the first two children and Sw F 165 a month as from the third child; in mountain regions, they amount to Sw F 180 a month for the first two children and Sw F 185 a month as from the third child. The household allowance amounts to Sw F 100 a month (situation as at 1 January 2000).

476. The allowances are paid until the child reaches the age of 16. They are paid up to the age of 25 if the child attends a school or is pursuing studies or an apprenticeship, and up to the age of 20 if the child is unable to earn a living on account of sickness or disability.

477. At the cantonal level, family allowances are paid as from the first child. Generally speaking, eligibility for allowances exists in respect of the children of married or unmarried parents, children of the spouse, adopted children and foster children. In some laws, any brothers or sisters for whose maintenance the employee provides are assimilated to his or her own children.

478. Benefits per child vary, according to canton, from Sw F 140 (Vaud) to Sw F 294 (Valais) a month. Fourteen cantons replace the child benefits by higher vocational training benefits for apprentices and students under the age 25. Their monthly amount for the first child ranges, according to canton, from Sw F 165 (Thurgau) to Sw F 378 (Valais). Some cantons have birth grants which range, according to canton, from Sw F 600 (Solothurn) to Sw F 1,500 (Fribourg, Vaud) per birth. Five cantons have introduced foster benefits (paid to families who provide a foster home for a minor child with a view to adoption) equal to the birth grants, one canton has introduced a large-family benefit as from the third child, and another canton provides household benefits for non-agricultural employees (situation as at 1 January 2000).

479. The age limit for eligibility for child benefit is in principle 16 years. In the case of vocational training, sickness or disability related to incapacity to earn, it is increased to 18, 20 or 25 years according to the canton.

480. At present, efforts are being made at the federal level to standardize the cantonal family allowances.[398]

3. Childcare services and facilities (art. 18 (3))

(a) Day nurseries

481. In Switzerland, demand for day nurseries is greater than supply. In 1990/1991, there were 21,000-24,000 places for children in crèches and day nurseries. This supply was clearly not sufficient in view of the 550,000 or so children of pre-school age, 608,000 between the ages of 7 and 15, and 650,000 working mothers with children under 15 in Switzerland. Only one child in 27 attends a day nursery. The existing supply does not even meet the needs of single mothers or those of families in which both parents have to work for financial reasons. Relatives

are often involved in the care of children. In 1991, this practice was followed by 42 per cent of families where the mother had a full-time job and by 52 per cent of families where the mother worked part time. The only canton with a day care system fully meeting demand is Ticino, where, from the age of three, children can attend a nursery throughout the day. The demand for infant care is particularly heavy, as is the demand for part-time care of children.

482. Generally speaking, there is little regulation of conditions of enrolment. But the shortage of supply (except in Ticino) makes enrolment dependent on need in most cases. Working parents therefore have priority. When an application is being considered, a working mother who is bringing up her children alone will have priority over a family in which the mother does not pursue a gainful activity and has no wish to pursue one. On the recommendation of a paediatrician, a child may also be admitted to a day nursery in order to pursue socialization objectives, e.g. a child suffering from a development deficiency. Conditions of enrolment are therefore based on need. When parents apply for a place in a nursery, the application is considered in the light of the following criteria: need, existing waiting list and available places.

483. The day nurseries and crèches offered by firms make it a condition that the beneficiary should be employed in the firm, unless places are still available.

484. The cantonal youth protection services or child welfare offices issue guidelines concerning the average number of children per qualified teacher. These figures vary from one canton to another, but the average numbers are:

Children under 2	5-6 per teacher;
Children aged 2-5	8-12 per teacher;
Children over 5	12-16 per teacher.

485. Teachers are sometimes assisted by trainees.

486. In public day nurseries, charges are calculated on the basis of the parents' income, on a sliding scale. The nurseries are subsidized by the community. Nurseries in firms are often also subsidized by employers, and parents are charged according to income. For single-parent families, charges are in practice calculated on the basis of the income of the single parent, and are hence lower than for a family in which both parents engage in a gainful activity.

487. In German-speaking Switzerland, the Association of Swiss Crèches has over 280 affiliated institutions. It is represented in French-speaking Switzerland through local agreements. It thus represents about two thirds of professional day-nursery institutions. According to its information, the supply of day care is being developed in the towns and communes which support them. The towns and communes have defined a policy on the subject (authorization of services, co-financing) and intervene to support and encourage private initiatives. Also according to its information, 13 cantons are involved in the training of crèche personnel.

(b) "Day mothers"

488. In Switzerland, the term "child carer" is little used; the term most commonly used is "day mother". No law sets a limit on the number of children a day mother can look after, but the Federal Ordinance regulating the Placement of Children (OPE) of 1977[399] provides that placement is subject to supervision in order to ensure the well-being of the child. In practice, and in accordance with the guidelines of the cantonal youth protection offices or the child welfare offices responsible for supervision, the average should be about five children, including those of the day mother. The number may also vary according to the competence of the day mother and/or the space available.

489. Day mothers are non-professional. They are generally women who have children of their own and look after other children during the day in their house or apartment. There is, therefore, no initial training in all cases for day mothers. Some cantons are beginning to look into this question and are setting up pilot courses.

490. There are various networks of day mothers, generally organized by communes, and each network is headed by a coordinator appointed by the commune and approved by the cantonal youth protection office or the child welfare office. The coordinator receives training in the various aspects of observation, interview technique, situation analysis, legal situation and ill-treatment. She visits day mothers who have applied for recognition and prepares a preliminary opinion for the cantonal office which issues authorizations to work as day mothers under the OPE. It is also the coordinator who is responsible for follow-up. The training of coordinators is financed by the State.

491. The networks of day mothers are generally subsidized by the communes and/or the cantons, and this fact makes it possible to limit the cost to parents. On average and according to the canton concerned, the parents pay a contribution of Sw F 4 an hour, plus a charge for meals. Some networks fix their prices according to a sliding scale based on parental income, while others have a fixed hourly charge. The cost to parents is in general fairly low.

D. Standard of living (art. 27 (1) to (3))

1. The parents' obligation of maintenance

492. The primary responsibility of the parents to ensure the child's maintenance is laid down in Swiss family law (CC, arts. 276 et seq.). The filiation link constitutes the legal basis for the obligation of maintenance. The parents must provide for the maintenance of their child, including the cost of the child's education and training and measures to protect him or her. They are required to bring up their child according to their abilities and to encourage and protect the child's physical, intellectual and moral development.[400] The parents must provide not only necessary maintenance, but maintenance appropriate to their situation. Their obligation of absolute maintenance continues in principle from birth until the child's majority. If the child does not yet have appropriate training on attaining the age of majority, the parents must, to the extent that circumstances may require it of them, continue to provide for the child's maintenance until he or she has acquired such training, provided that it is completed within the normal period.[401] The parents generally provide for the child's maintenance in kind through care and

upbringing within the family nucleus. When the persons exercising parental authority are not living together or the parents are divorced, only the parent having custody of the child assumes his or her duty of maintenance in kind, whereas the other parent fulfils his obligation through a financial contribution.

2. Welfare

493. The principal means of combating poverty in Switzerland, alongside the social security system, is welfare or public assistance. Public assistance operates in a supplementary and subsidiary fashion, and extends only to persons who are not or are no longer covered by social security or whose income is insufficient. This assistance comprises welfare and subsidies, in kind and in cash, and also non-material aid in the form of advice, assistance and services. Welfare is aimed not only at ensuring a minimum level of subsistence for persons in need, but also at encouraging their financial and personal independence and ensuring their social integration.

494. Public assistance is a cantonal responsibility. All cantons have enacted legislation on welfare or assistance. This legislation is often very detailed, and in some cases accompanied by supplementary enactments (decrees, regulations). Execution is nevertheless within the virtually exclusive competence of the communes, which may issue prescriptive enactments on the subject. Although this results in a certain diversity in terms of benefits, the fact remains that a minimum subsistence essential for leading in the long term in Switzerland a life consistent with human dignity will be guaranteed (FC, art. 12; see commentary relating to Convention, article 6).

495. The Swiss Conference of Social Welfare Institutions (CSIAS) publishes recommendations for the social services authorities in the various cantons and communes. Despite their non-binding character, these guidelines are widely implemented. They fix, inter alia, standard amounts which correspond to the "minimum subsistence essential for leading in the long term in Switzerland a life consistent with human dignity". The standard amount recommended is Sw F 1,010 a month for one person. A supplement of about Sw F 100, adjustable in accordance with local living conditions, is added (amounts for 1998 adapted to the size of the household on a declining scale). These standard amounts for everyday expenses are accompanied by housing costs and expenditure on medical care. The coverage provided for by the CSIAS recommendations go beyond the constitutional guarantee of minimum conditions of subsistence.[402]

3. Policies for the benefit of families

496. The family policy measures improve the situation of families, and hence that of children. In Switzerland, family policy is based in particular on article 116 of the Federal Constitution and on certain cantonal constitutional provisions which provide for additional measures. Every family policy measure must respect equality of rights between men and women.

497. The principal practical measures are as follows:

(a) Compensation for family responsibilities is provided primarily through family allowances;[403]

(b) Tax relief constitutes another important element of compensation. Both the Confederation and the cantons have designed their fiscal systems in a manner favourable to the family, with various types of corrective measure (deductions, dual scale, family quotient). The Federal Department of Finance, in particular an expert commission within the Department, has studied options for improving the current system;

(c) Eleven cantons also provide parents with benefits in the event of need, in accordance with various models and on different conditions;

(d) Federal assistance for housing construction represents another form of support for families (FC, art. 108 (4));

(e) Family responsibilities, and responsibilities in the areas of education and assistance are taken into account in determining social insurance benefits (AVS, AI, sickness insurance, unemployment insurance);

(f) Lastly, it remains to mention the following family policy measures: scholarships for studies and apprenticeships, meeting the needs of the family and children in the media and leisure activities, marital or family consultations, training of parents, protection of children, prevention of violence and sexual exploitation, family assistance services, lower fares for families on public transport.

498. Among the institutions responsible for the implementation of family policy, the following should be noted:

The Central Organization for Family Questions, within the OFAS, which implements the legal provisions on family allowances in agriculture, is the coordinating service for family questions within the federal administration. It has other responsibilities in relation to cantonal legislation on family allowances and Swiss and foreign family policy;

The extra-parliamentary Commission for Coordination on Family Questions, which is a consultative body within the Federal Department of Home Affairs and is active in information and research;

The parliamentary Group on Family Policy, whose purpose is to safeguard the interests of the family in the Federal Chambers;

The family councils or family offices established by certain cantons (e.g. Fribourg, Vaud, Valais and Jura);

The communes, which play an essential role in family-oriented social welfare (crèches, day nurseries, family assistance services, etc.).

VII. EDUCATION AND LEISURE, RECREATION AND CULTURAL ACTIVITIES

A. Education, including vocational training and guidance (art. 28)

1. The right to education

499. The list of social goals includes in particular a provision that the Confederation and the cantons "shall strive to ensure that ... children and young people and people of working age shall benefit from initial and continuing education according to their abilities" (FC, art. 41). While the Constitution does not explicitly guarantee the right to education, which was rejected by referendum in 1973, article 19 guarantees the right to free, sufficient primary instruction. Appeals may be brought before the Federal Court on the implementation of this basic right. In addition, article 62 of the Constitution requires the cantons to ensure adequate primary education, open to all children and free of charge in public schools.

500. The cantons are essentially autonomous in the area of education, particularly as regards compulsory education. They decide how education will be organized and regulate it through legislation that varies considerably from canton to canton. They are obliged under the Constitution to provide primary education that must be adequate, compulsory, free of charge[404] and secular.[405] The principle of non-denominationalism applies to all public schools, at all levels.[406] Most cantons give the communes responsibility for establishing and maintaining some kinds of school, in particular nursery schools and compulsory schools. Where the Confederation has legislative jurisdiction, in many cases it entrusts cantons with implementation of the law.

501. The Confederation has jurisdiction in two principal areas. It ensures the provision of adequate primary education, which is compulsory and free of charge, and administered by the cantonal authorities. It also regulates vocational training, runs the federal technical universities,[407] regulates apprenticeship contracts,[408] subsidizes cantonal universities and scholarships[409] and promotes sport.[410]

502. Switzerland has no federal institution analogous to a "ministry of education". At the Confederation level, there is a division of responsibilities between the Federal Office for Education and Science (OFES), which is part of the Federal Department of Home Affairs (DFI) and deals with research, policy on universities and subsidies to the cantons for scholarships and international cooperation, and the Federal Office for Vocational Training and Technology, which is part of the Federal Department of Economic Affairs (DFE) and responsible for vocational training. The same division of responsibilities can also be found in some cantons, but in most cantons vocational training is a branch of the Department of Education.

503. Education is coordinated among cantons, and between cantons and the Confederation, through a number of institutions, including the Conference of Cantonal Directors of Education (CDIP), established in 1897.

504. Beyond the institutional framework, inter-cantonal coordination took an important step forward in 1970, when an Inter-Cantonal Concordat[411] was adopted "with the aim of developing education and harmonizing legislation in the various cantons". To date, 25 out of the 26 cantons have signed the Concordat.[412]

505. The signatory cantons committed themselves to harmonizing their education legislation with the following objectives, which have now been achieved:

Age of entry to compulsory education: six years of age by 30 June; entry may be brought forward or put back by four months;

Compulsory education: a minimum of nine years, with a minimum 38-week school year;

Period of education up to maturité (the Swiss senior high school diploma): a minimum of 12 years and a maximum of 13; school year to begin between mid-August and mid-October.

2. Education in Switzerland

(a) Pre-school education

506. The organization and funding of pre-school (nursery) education is the responsibility of cantons and/or communes. Generally speaking, nursery school is optional and free of charge and caters for children aged between three and seven, depending on the canton. In German-speaking Switzerland, nursery education is mainly play-based; in French-speaking cantons and Ticino, preparation for school is also important.

507. The social role of nursery education is becoming more widely recognized, especially its role in early integration of children of foreign origin.

508. Two thirds of children attend the first year of nursery school and nearly all in the relevant year group attend the second year. Only 2 per cent of children now enter primary school without having been through nursery school; the average duration of nursery education is 1.8 years.

(b) Compulsory primary education

509. Primary education is compulsory and all children regardless of nationality, country of origin or sex must be given adequate primary education in a school in their commune of residence.

510. One consequence of the principle of free primary education is that communes are obliged to establish schools for resident children, which in turn means that schools must not be too far away. A child who lives a particularly long way from the school in his or her own commune has the right to attend, free of charge, a school in a neighbouring commune if the journey is noticeably shorter.

511. The organization of primary education varies from canton to canton. In most cases, primary education lasts six years, and starts between the ages of five and seven; in four cantons, it lasts five years and in two cantons (Vaud and Basel-Stadt), it lasts only four years.

512. The structure of primary education is relatively uniform in all cantons, and is based on the principle of a single class teacher, although in exceptional cases there are two. Many cantons also have specialist teachers for certain subjects such as arts and crafts, physical education and the second language. Each class normally comprises a single year group, although mixed-age classes can be found in sparsely populated areas. Experiments are also being carried out in a number of cantons to abolish age groups in order to allow each child to develop at his or her own pace. The average number of children per primary class was 20.1 in 1997/98.

513. There are between 36.5 and 40 weeks in the school year, depending on the canton. First and second grades have 20 lessons per week and fifth and sixth grades between 34 and 36. The curriculum normally includes, first and foremost, the utilitarian areas of culture (reading, writing and mathematics), environmental studies (natural sciences, history and geography), artistic subjects (singing, music and art) and physical education. Teaching of a second national language now starts in fourth or fifth grade, German for French-speaking Switzerland and French, with certain exceptions, for German- and Italian-speaking Switzerland.

(c) Compulsory junior secondary education

514. The aim of the junior secondary level is to provide a general basic education and prepare students for apprenticeship or further studies. Its functions also include selection and orientation.

515. The duration of junior secondary education depends on that of primary education: it is currently three years in most cantons, but in some it is four or five years. Junior secondary is divided into three or four bands in nearly all cantons (except Ticino, Geneva, Basel-Stadt and some parts of Valais), and is therefore quite selective. First, there are elementary streams and advanced streams. The elementary streams provide basic vocational training for around one third of the students in a given year group, with a higher percentage of boys than girls. The advanced streams comprise two thirds of the children in a given year group and are in turn subdivided into two sections: the upper streams, leading to maturité school, and the middle, or general, streams, which prepare students for vocational training. The cantons of Ticino, Geneva, Basel and parts of Valais have opted for a single mixed-ability school structure (cycle d'orientation). There is a growing trend towards this comprehensive-style organization, which helps students to avoid being faced with premature choices.

516. There is a well-developed system of educational counselling. In principle, every school has a guidance counsellor who gives individual consultations. Youngsters also have an opportunity to experience various kinds of work at first hand through job placements lasting around a week.

517. More and more students are taking a tenth "transitional" year between the end of compulsory education and the senior secondary level. This optional extra year enables those who are still undecided to supplement and consolidate their learning to date, in preparation for their choice of further training or education.

518. As part of a study of school students' schedules and workloads in Switzerland and Norway, more than 3,500 children and young people from fourth to ninth grades in German- and

French-speaking Switzerland and in Norway were interviewed for a national research programme looking into the effectiveness of Swiss education systems.[413] The questions related, among other things, to children's and young people's timetables, their social circles, school itself, their physical and mental well-being and their behaviour. On the basis of this study, it was possible to draw the following conclusions about the education system:

> The majority of children and young people go willingly to school, which is where they spend most of their time. Boys are more likely to dislike school, a tendency that increases with age. Homework is a common source of irritation, as it makes deep inroads into leisure time. In German-speaking Switzerland, 60 per cent of students feel that school leaves them little time for anything else; in French-speaking Switzerland, the figure is 48 per cent;
>
> The majority of teachers find teaching and the teaching environment conflict-free and congenial. This view is less widespread among students;
>
> Adults generally believe that children and young people are fully occupied during their leisure time.

(d) Senior secondary education

519. Nearly 90 per cent of children in a given year group go on to further education on completion of compulsory schooling.

520. There are two types of senior secondary education: further education and vocational training. Vocational training occupies a remarkably important place in the Swiss education system: 7 out of 10 young people go on to vocational training on completion of compulsory schooling. Only a minority of students move on to further education in a maturité school leading to university. There has been a shift in this tendency since the 1980s, however, with a steady decline in the percentage of students going into vocational training and an increase in those going into further education.

(i) Further education

521. Further education at the senior secondary level is provided mainly by maturité schools, which are advanced-level establishments. The duration of maturité school varies from canton to canton but must be a minimum of four years, beginning in principle the year following completion of compulsory schooling. The average number of hours' teaching is between 3,000 and 4,000, at around 36 hours per week and with a minimum 38-week school year. At this level, any foreign child arriving in Switzerland may take the federal maturité examination, which will enable the child to continue his or her academic career.

522. The maturité comprises seven basic subjects, together with one major and one subsidiary option and a maturité project. The combination of major option plus basic subjects and subsidiary option constitutes the maturité profile.

523. The number of maturité students as a percentage of the overall population varies greatly from canton to canton. Of the relevant year group at the national level in 1996/97, 17.7 per cent of students obtained the maturité.

524. Diploma-level schools (EDD) offer broader sectors of the population the opportunity to continue their general education at the post-compulsory level and learn more about working life; they also meet the needs of those who cannot or do not wish to go on to a maturité school but nevertheless need to acquire a level of general education and all-round culture that will give them access to higher, non-university vocational training. The EDD prepare students for entry to areas such as teaching, the paramedical professions, social work, administration and artistic fields, in particular.

525. Teacher training in a minority of cantons is still provided by écoles normales, or teacher training colleges, which train teachers for nursery schools and compulsory education. This system is now being thoroughly overhauled and all teachers, with some exceptions, can now be said to have been trained in a college of education or a university.

(iii) Vocational training

526. Vocational training is one area of education that falls primarily under the jurisdiction of the federal authorities.[414] The current legal framework is provided by the Federal Act concerning Vocational Training (LFPr),[415] an act of great significance as 85 per cent of young people in vocational training complete an apprenticeship in accordance with this legislation. Apprenticeships are thus central to the vocational training system. It is thus an area of great importance and new legislation on vocational training is currently being prepared. Vocational training may take various forms:

> Apprenticeship in a company. This is the most common form, and includes an introductory course, practical training in the company and theoretical training in a vocational training school;
>
> A full-time course in a vocational training school (technical or business college);
>
> Maturité professionnelle, established in 1993. Courses supplement in-company training and vocational training school courses.

527. The availability of apprenticeships fluctuates with the economic situation. Companies are under no obligation to train apprentices. In response to the economic recession and structural adjustments of the early 1990s, the State and the business sector set up a programme to encourage companies to offer apprenticeships. This programme has had positive results.

528. In its first decree on apprenticeships, dated April 1997, Parliament allocated Sw F 60 million to promotion of apprenticeships, thereby giving a real boost to vocational training. The cantons had Sw F 40 million available up to mid-2000 for projects aimed at increasing the number of apprenticeships available. Sw F 20 million were allocated to supra-regional or national projects. The Federal Office for Vocational Training and Technology has launched a national apprenticeship campaign, whose first phase aims at maintaining and

expanding the number of apprenticeships. The second phase will emphasize and promote the more qualitative aspects of apprenticeships. This awareness-raising campaign is one of more than 100 projects now under way under the first decree on apprenticeships.

529. Since new legislation on vocational training will not come into force before 2003 at the earliest, and the 1997 decree on apprenticeships is due to lapse in August 2000, Parliament adopted a second decree on apprenticeships in June 1999. This decree provides for Sw F 100 million to be earmarked for the establishment of training places in growth sectors, and for the advancement of girls and of young people with educational problems. This sum should make it possible to pursue three main aims between 2000 and 2005. First, support should be given to very small businesses in the high-technology sector (biotechnology, information technology, etc.) to enable them to draw up joint training agreements. In new sectors such as information technology, telephony, multimedia, marketing, design, leisure, keep-fit and health, travel, and financial and business services, new job definitions should be developed and new training places established. Weaker students should not need to wait until their tenth year of schooling but should be prepared for vocational training during a well-planned introductory year. Young women should be encouraged to enter non-gender specific, forward-looking professions by means of awareness-raising campaigns, additional apprenticeships and new forms of training.

530. According to the guidelines for implementation of the first decree on apprenticeships, the highest priority should be given to publicizing apprenticeships and to promotional campaigns on every aspect of apprenticeships for women. These aims were adopted by the Swiss Conference of Delegates on Equality between Women and Men and by the Federal Bureau for Equality between Women and Men, which in autumn 1997 launched a national project to increase the number of apprenticeships for young women. Early June 1998 saw the start of "16+", an apprenticeship project of the Conference of Delegates on Equality between Women and Men, which includes, in particular, measures to promote a non-gender dependent choice of employment and to remove the obstacles in the way of a free choice of employment. In addition, the Conference of Delegates on Equality of Opportunity has proposed monitoring procedures aimed at ensuring equal opportunities in the implementation of the decree on apprenticeships. It has also prepared equal opportunities standards that should be taken into account in planning, implementing and evaluating all projects in this field.[416]

(e) Higher education

531. Switzerland has 12 universities. Five of its cantonal universities (Basel, Zürich, Bern, St. Gallen and Lucerne), and the federal polytechnic university in Zürich, are in the German-speaking part of the country. The other four cantonal universities (Lausanne, Geneva, Neuchâtel and Fribourg - this last a bilingual university with courses in both French and German) and the other federal polytechnic university in Lausanne, are in the French-speaking part. In 1996, the Italian-speaking canton of Ticino established its own university (Università della Svizzera italiana).

532. Switzerland also has seven specialized higher colleges (HES), which means it now has a highly developed system of higher education colleges in the fields of technology, economics and administration.

533. For entry to a Swiss university, a student must be 18 and have a command of the language used for teaching and study, and must also have a certificate of maturité or a recognized equivalent qualification. The cantonal universities may recognize certain other qualifications at their discretion. There is no central university admissions office and, applications are made directly to the university of the student's choice.

534. University enrolment fees range from Sw F 375 to Sw F 4,000 per year. Compared with maintenance expenses, tuition fees are thus negligible.

535. Under article 66 of the Constitution, the grant of scholarships falls under cantonal jurisdiction. Each canton is free to determine its own conditions for the award of scholarships, set the amounts and establish procedures. However, the Confederation makes a vital contribution to the democratization of access to higher education by subsidizing cantons' scholarship expenses. It pays between 20 and 60 per cent of the expenses cantons incur in funding scholarships. The Confederation sets the upper and lower limits for scholarships eligible for subsidies and ensures that the conditions for awarding scholarships do not restrict the free choice of academic career.

536. An effective and well-developed scholarship system is of great importance in keeping access to these institutions open to all social classes, and enormous progress has certainly been made in terms of access to educational establishments. According to surveys on students' social background, a child whose parents did not go to university is now around four times less likely to go to university than a child whose parents did go. In the 1960s, inequality of opportunity in this regard was nearly 12 times as great. Despite these advances, efforts are still needed to improve equality of opportunity. Scholarships are a very important contribution to that work. Other measures are also important, such as individual support for students from less favoured social strata at all levels of the educational system.

537. In special cases, scholarships are offered by private organizations, which set conditions in accordance with their own rules and regulations. The Confederation also offers a certain number of scholarships to foreign students every year.

538. As a result of oversubscription in medical studies, a compulsory aptitude test was introduced in 1998 for those who had enrolled for courses in human medicine in Basel, Bern, Fribourg and Zürich. Nearly 82 per cent of those who took the test obtained a place in the first round. There was no significant difference between men's and women's test results or their admission rates, which means that a major condition of gender equality in entry to higher education has been fulfilled. There is no indication that students from less favoured social strata are at a disadvantage in these tests.

(f) Private schools

539. Parents may choose to educate their children in a private school. In this case, admission will depend on the school itself. Some private schools are subsidized by cantons or the Confederation.

540. The right to establish private schools derives from the economic freedom guaranteed under article 27 of the Constitution. Private schools must provide adequate education within the meaning of article 62 of the Constitution. They are under the jurisdiction of the cantons, which issue the relevant licences and also conduct inspections.

541. Primary education is under the direction or jurisdiction of the public authorities (FC, art. 62), and this principle is extended by the cantons to compulsory education as a whole. Private schools do exist, however, but are rarely subsidized.

542. The majority of senior secondary schools are cantonal schools, although some are commune schools. Private schools at this level, which in the past were often religious schools, are in many cases recognized and even subsidized. The majority of the vocational training schools are run by cantons, while continuing education, both general and vocational, is largely in the hands of the private sector (professional associations or commercial institutions), but is subsidized by both the Confederation and the cantons.

(g) Vocational guidance

543. In accordance with the Federal Act concerning Vocational Training (LFPr),[417] vocational guidance, in the form of general information and individual consultation, is available to young people and adults as an aid to choosing an occupation or course of study, or learning more about the career they have chosen. Parents, the school and employers all participate in providing this guidance to young people, which is optional and free of charge.

544. The Confederation promotes vocational guidance and, in conjunction with the cantons and relevant professional associations, is responsible for the training and development of vocational guidance counsellors. Indeed, such counsellors may not practise unless they have received training recognized by the Confederation.

545. The cantons are responsible for organizing appropriate vocational guidance and must maintain a cantonal vocational guidance centre.

546. Vocational guidance statistics for the 1996/97 school year show that 117,395 young people had one or more interviews with a vocational guidance counsellor. Of those, 6.34 per cent were aged under 14; 38.3 per cent were aged between 15 and 16; 20.4 per cent between 17 and 19; 14.4 per cent between 20 and 24; and 20.6 per cent 25 and over. Apprenticeships were suggested in 33.1 per cent of cases; senior secondary-level education or training in 16.9 per cent of cases; and higher education or training, a temporary measure, a career change or other solutions were suggested in 11.8 per cent of cases.

(h) School and language

547. Switzerland is a multilingual State with four national languages. The official languages are German, French, Italian and Romansh.[418]

548. Education is subject to the principle of linguistic territoriality, i.e., the language of education is the language of the commune where the school is located. The underlying aim is to

safeguard cantons' linguistic homogeneity through the linguistic assimilation of migrants. As a result, parents who speak a different national language have no right to teaching in a language other than that of the commune. Moreover, the commune of residence has no obligation to pay any allowance in respect of a child who attends school in a neighbouring commune where teaching is in his or her mother tongue.[419] Romansh is the language of education in a certain number of primary schools, but at the secondary level it is generally taught as a foreign language.

549. A second national language (German in French-speaking Switzerland and normally French in German-speaking Switzerland and Ticino) is taught from the fourth or fifth year of compulsory school. Students can choose either a second national language or English as their second foreign language. Experiments in bilingual teaching have recently been conducted in Fribourg, Sierre, Bienne and Thoune, where bilingual French/German maturité classes have been formed. There are also private schools which provide bilingual teaching.

(i) Discipline in schools

550. Although punishments such as extra work are permitted in schools as a disciplinary measure, corporal punishment is strictly forbidden in Switzerland: it is recognized by the Federal Court as a violation of the child's personal freedom and is an offence under the Criminal Code.

3. Public expenditure on education

551. Education funding in Switzerland reflects the division of institutional jurisdictions. Each level of authority assumes its own share of the financial burden, in accordance with its responsibilities. Since compulsory education is free, the financing comes chiefly from the communes (59.9 per cent) and the cantons. Expenditure on senior secondary-level education comes principally from the cantons, while higher education funding is shared equally by the cantons and the Confederation.

Level of education	Millions of francs (1996)				
	Total				
	Amount	%	Confederation	Canton	Commune
Pre-school	761.0	3.7	0.0	244.3	516.7
Compulsory education	9 742.9	47.0	22.7	3 849.0	5 870.3
Special education	765.7	3.7	0.0	386.5	379.1
Vocational training	2 938.6	14.2	514.3	1 984.3	440.0
Teacher training	4 018.6	1.9	0.0	389.8	11.9
Further education college	1 623.5	7.8	11.5	1 542.2	69.9
Higher vocational training	584.1	2.8	129.2	440.56	14.4
Higher colleges	3 528.2	17.0	1 782.9	1 730.7	14.6
Other	375.2	1.8	24.3	305.0	46.8
TOTAL	20 720.9	100.0	2 484.8	10 873.2	7 362.9
Salaries	14 056.9	67.8			
Teachers' salaries	9 621.0	46.4			

4. Gender equality

552. Women's access to education is vital to the achievement of other aspects of equality. Article 8 (3) of the Constitution explicitly states that legislation shall ensure equality in law and in fact in family, education and work. There has been a considerable improvement in girls' and women's access to education, although the gap has not closed entirely.

553. In compulsory education, nearly all boys and girls continue their studies up to the age of 15. The principle of equality has resulted in a standardization of curricula. Girls do better overall in the selection process: there are fewer girls than boys in special education classes and fewer of them repeat grades. Yet on completion of compulsory education, fewer girls than boys continue their studies: in 1987, 18 per cent of girls aged 20 had no post-compulsory education, as against 8 per cent of boys. Women's access to post-compulsory education has improved, however, and they have made up the ground lost in earlier generations: more than half of all women aged over 65 have no post-compulsory education.

554. On 28 October 1993, the Conference of Cantonal Directors of Education (CDIP) published recommendations on equality between women and men in education. Reference is made to these recommendations in new curricula such as the curriculum for compulsory education (primary and junior secondary) of the canton of Bern. They include, among other things, a recommendation that teaching programmes should include discussion of the traditional roles of girls and boys. Both sexes should be shielded from conventional roles in their development. Awareness of gender roles, prejudices and stereotypes is a prerequisite for the advancement of girls and boys in general.

555. The gender gap becomes noticeable when girls and boys make their choices for senior secondary education. Only 66 per cent of girls in a given year group opt for vocational training, as compared with 78 per cent of boys. However, the percentage of women in vocational training has increased steadily. Girls tend to prefer short vocational courses (from one to three years), chiefly in business, administration and medical care. Women and men attend maturité schools in the same proportions and in 1997, 51 per cent of maturité certificates were obtained by women.

556. Access to higher education, too, has improved considerably. Women now account for 43 per cent of university students, 40.9 per cent of first degree graduates and 30 per cent of doctorates. Women are represented in the various disciplines as follows: humanities, 61.1 per cent; economic sciences, 24.4 per cent; law, 44.5 per cent; natural sciences, 29.6 per cent; technical sciences, 20.1 per cent. On 6 January 2000, the Federal Office for Vocational Training and Technology (OFFT) transmitted a plan of action on equal opportunity for women and men in higher education colleges to the Directorate of Higher Education Colleges.

5. Children of foreign origin[420]

557. There are a large number of migrant workers in Switzerland: in 1993, for example, 18.5 per cent of the population was of foreign origin. Southern European countries (Italy, Spain, Portugal and the former Yugoslavia) are still the most heavily represented, although the range of countries of origin is continually widening. The impact of this situation on

the composition of school classes is not negligible. In 1997/1998, 22 per cent of pupils were of foreign origin. This figure covers a wide variety of situations, however. It includes second-generation children born in Switzerland, children of recent migrants, and students who come to Switzerland specifically for their education. The situation in the cantons also varies widely: in Geneva, for example, 40 per cent of students are of foreign origin, yet in Uri the proportion is 5 per cent.

558. Generally speaking, there is greater cultural diversity in French-speaking Switzerland than in German-speaking Switzerland. The percentage of classes with a large number of students from another culture ranges from 77 per cent in Geneva to 2 per cent in Obwalden. In the country as a whole, one third of classes in compulsory schools have a large number of students from other linguistic or national cultures and one fifth of classes contain only Swiss children who are being educated in their mother tongue.

559. On completion of primary education, and in the transition to junior secondary school, a markedly greater number of children of foreign origin move into the elementary streams. In 1997/1998, for example, whereas the percentage of young foreigners in junior secondary schools overall was 22 per cent, it was 33 per cent in the elementary streams, 12 per cent in the advanced streams and 26 per cent in non-selective schools (attended by a sizeable proportion of students, particularly in Ticino and the French-speaking cantons). By contrast, children of foreign origin are over-represented in special education classes: in 1997/1998 they accounted for 45 per cent of pupils in such classes.

560. As regards post-compulsory education, youngsters of foreign origin account for 14 per cent of those entering maturité schools and 18 per cent of those going into vocational training. They are over-represented in basic vocational training courses, however, where they account for 46 per cent of students. A number of organizations offer young foreigners training and employment opportunities on completion of their compulsory education. In Geneva, a reception and orientation service (SCAI) is available to all young foreigners who are under 20 but have passed the age of compulsory education. Vocational training in preparation for possible return to and resettlement in the country of origin can be considered as international technical cooperation, and promotes respect for individual rights abroad. An example of this is the Tagesstruktur für Asylsuchende (TAST) organization in the canton of Bern, which is supported by various communes and other organizations working in the field of asylum. Asylum-seekers and persons admitted on a temporary basis who are aged between 15 and 25 and have no access to regular training structures are provided with a daily routine which varies by age group and focuses on continuing education and employment. In Zürich, "workfare" has organized a range of 23 different training and occupation programmes for comparable target groups; in 1997, this scheme provided a daily routine for an average of 265 people per month.

561. There was a high proportion of students of foreign origin (19.3 per cent) in tertiary-level university education in 1998/1999, but fewer in non-university higher education (9 per cent). Many of those students came to Switzerland especially in order to study, however: two thirds of foreign students are "mobile" and only one third grew up in Switzerland. The Confederation awards some 300 scholarships to foreign students every year. Half of these go to students from

industrialized countries, who may receive a one-year scholarship where reciprocal arrangements exist, and half to students from developing countries, who may obtain a grant for the duration of their studies.

562. The two key concepts underlying the education of migrants' children are integration and respect for the culture of origin.[421] The majority of cantons have therefore adopted a variety of measures to help children of foreign origin. In some cases, reception classes have been established for young people arriving in Switzerland. These classes act as a transition stage that helps them to integrate into normal school life. Other cantons place young foreigners in smaller classes in order to assist integration. There are also remedial classes, support classes for individuals or small groups, as well as courses in the local language; these are provided outside school hours. In addition, private organizations offer courses in the language and culture of origin, with the support of the authorities of the country of origin. These classes enable the child to build its own cultural identity by integrating into the host society without renouncing the culture of origin.

563. The Institute of Special Education of the University of Fribourg and the National Fund have made a joint study of integrated and separate classes in schools and, during the past two years, integrated and separate classes for foreign children with educational difficulties. Provisional results to date show that foreign children have an education deficit, which is indicated in the Fribourg study by a higher than average proportion of foreign children in special classes. This already has clear education policy implications: efforts must be made to integrate as many foreign children with educational difficulties as possible into normal classes, while making provision for special education for individuals.

564. In March 1999, the Council of State of the canton of Zürich allocated Sw F 2.5 million to a project on qualitative aspects of multicultural schools. Support will be given to projects in 15 schools over the next three years. The aim of the project is to develop teaching methods appropriate to students' varying situations that will motivate not only those students with problems but also the more gifted. One method is to have a second teacher work from time to time with weaker and very strong students. It is also clear that increased involvement of parents in schooling has a positive impact on educational success, and specialists from the various linguistic communities should therefore participate as mediators. After a trial period of three years, the Department of Education will evaluate the projects in the 15 schools concerned and on that basis will prepare a "quality assurance" model aiming at integrated rather than separate classes, which will be made available to all schools concerned in the canton of Zürich.

565. In June 1999, the Swiss Government issued an opinion on the legality of separate classes for foreign school students,[422] declaring separate classes unconstitutional. At the very most, introductory and supplementary classes could be provided to children in need of remedial language teaching. Separate classes would violate the constitutional principle of equality under the law and non-discrimination.[423] They would also contravene certain provisions of the Convention on the Rights of the Child, the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Racial Discrimination. The Federal Commission against Racism issued a similar opinion in a report dated August 1999.[424] Provided there is no violation of the principle of equal opportunity and separation does not lead to

permanent segregation, it is perfectly admissible under constitutional law for children to receive introductory or supplementary courses if they require remedial language teaching because of their background, and indeed such an approach may be very much in the interests of integration.

566. The cantons make every effort to ensure that these children attend school. Depending on their number and situation, they are - temporarily - placed in integration or transition classes where they receive intensive language training.[425] Other cantons opt for rapid integration into normal classes with supplementary language training. The move to the world of work is especially important for this group of students, and many cantons take advantage of the transition schemes offered by vocational training schools, such as an introductory year, a placement year, pre-apprenticeship or basic training.

567. At this point mention should be made of the issue of compulsory schooling for "clandestine children", a problem arising out of the status of seasonal worker, which does not permit family reunification. Certain foreign families are in Switzerland illegally and some of their children do not attend school. In a circular to cantonal immigration authorities, the Federal Council has issued instructions that children residing illegally in Switzerland should be treated lenently, since their parents may soon be given the right to family reunification when their seasonal work permit is replaced by a yearly residence permit. The cantonal authorities also have the option, at least in these cases, of granting the children a residence permit for humanitarian reasons. In practice, then, it is the fundamental right to education that prevails, even though this may conflict with federal legislation on foreigners' residence or settlement. A study carried out in the cantonal administrations shows that children attend school in the cantons whatever their residence status: in cantons such as Graubünden, however, there is a requirement of a minimum probable period of residence of three months.

6. Disabled children[426]

568. Education for disabled children in Switzerland is a form of specialist teaching, for which a specific approach known as special education is used. Specialist education is strongly influenced by legislation on disability insurance, which provides for funding for the education of disabled children.

569. Early special education for pre-school children with disabilities aims basically to apply special educational techniques and provide support to the parents. Pre-school special education may be provided at the child's home, at an independent or multipurpose facility, or as a service provided by a special school, a home or a clinic.

570. There are two institutional frameworks for special education within the compulsory school system:

Special classes within public schools;

Special schools recognized by the disability insurance scheme.

571. Special classes cater chiefly for children with learning difficulties or behavioural problems. Generally speaking, they offer introductory classes (the first year curriculum spread over two years), development classes, small classes for children with learning difficulties, and classes for children with language problems or physical disabilities.

572. Special schools are separate institutions for physically or mentally disabled children on a daily or boarding basis. They are wholly or partly funded by the disability insurance scheme and their legal framework may be provided by the canton or by private foundations or associations. All cantons have institutions for mentally disabled children and young people and throughout Switzerland there are special schools funded by the disability insurance scheme for children with behavioural problems, physical disabilities or language difficulties.

573. As a supplement to the teaching provided in special classes or in special schools funded by the disability insurance scheme, there are also school medical services that offer support in a range of areas such as speech therapy, psychomotor education and rehabilitation, and school psychological services.

574. In recent years there has been a growing trend towards integrating special education into public schools,[427] particularly in French-speaking Switzerland. Special classes for children with difficulties are increasingly to be found in the same building as the normal primary school. Efforts are also being made in a number of cantons to integrate children with physical or mental disabilities. A variety of experiments is being carried out, ranging from individual integration, where primary classes include children with a sensory or mental disability, to collective integration, where special education classes are located on the same premises as the normal primary school and some activities are carried out together.

575. After completion of compulsory education, the law provides that young people with disabilities shall have the opportunity to take up vocational training. They are helped in their choice by regional vocational rehabilitation offices set up as part of the disability insurance scheme. Under the legislation on vocational training, they may be granted certain facilities with regard to training courses or apprenticeship examinations. There are special vocational training schools for apprentices with sensory disabilities, and those with mental disabilities may take either an initial vocational training course, in accordance with the legislation on disability, or an elementary vocational training course, in accordance with the legislation on vocational training, depending on the severity of their handicap. There are also sheltered workshops in a number of companies, where they can take vocational training courses.

576. At both the cantonal and inter-cantonal levels, then, there is a whole network of State or State-supported facilities providing appropriate care and support for the disabled from a very early age, covering school, vocational training and employment, and including care for older people. The network expands in response to specific needs and adapts to accommodate new developments in the field of care for the disabled, for example by offering further training, helping with integration, or providing new types of housing.

7. Low achievers and gifted children

(a) Low achievers

577. As part of a long-term study conducted with the support of the National Scientific Research Fund, researchers from Fribourg University questioned 68 young adults with educational difficulties. It emerged that those who had not done well in school but had remained in normal classes did better at work and had better career prospects than those who had been in smaller special classes. The point at which special education is provided, and its duration, also seem to be a factor in the career development of low-achieving students: the earlier small-group teaching is introduced, and the shorter the period of application, the better the career prospects. One way of improving the situation of school-leavers from the smaller classes would be for special schools to offer a course specifically designed as an introduction to working life, but which would not necessarily end on completion of compulsory education. The following differences between the sexes were noted: young men seeking a temporary occupation when they finish school tend to opt for a year working or considering their choice of future employment, which gives them a chance to sample their chosen occupation. Young women, on the other hand, tend to choose a year's domestic employment apprenticeship, which means they are more likely to remain in unqualified work.

(b) Gifted children

578. Along with increased encouragement for children with educational problems, there has recently been an increasing demand for special help for gifted children. More and more parents and teachers are raising this problem with school authorities. Specialists estimate that between 3 and 5 per cent of children are gifted children, yet the public education system still makes little special provision for them. To avoid the risk of boredom at school, which can lead to disruptive behaviour or depression, the cantons allow them, among other things, to take advanced courses, to skip certain classes or to take special language or information technology courses. For parents looking for additional motivation, however, there remains the possibility of sending the child to private school. The "Talenta" Institute, in the canton of Zürich, is the first private school for gifted children.[428]

8. Illiteracy

579. Switzerland has no precise statistical data on illiteracy. A certain amount of research has been done, however, and, according to the most widely accepted estimate, there were between 20,000 and 30,000 functionally illiterate individuals in the country as a whole in the early 1990s: these figures refer only to Swiss adults who have completed their education without mastering reading and writing.[429]

580. Between 12.9 per cent of the population (German-speaking Switzerland) and 14.2 per cent (French-speaking Switzerland) experiences great difficulty in reading and understanding everyday texts.[430]

581. Switzerland's efforts to combat illiteracy include support for adult education and more general measures to improve the educational attainment of all school students, including more flexible systems of assessment, pedagogical support, a policy of integration, reception classes, extension of pre-school education and provision of places in special education.

582. Switzerland is also one of 29 OECD countries taking part in a programme for international student assessment (PISA), the aim of which is to assess to what degree children approaching the end of their compulsory education have acquired the knowledge and skills that are essential for full participation in society.

583. As in the past, there are initiatives at both the regional and the local levels, with strong participation by independent associations, with the support of the local authorities. A number of associations are extremely active in the area of adult literacy and organize many courses (Lire et écrire, International Movement ATD Fourth World, the "open universities" (universités populaires) and leisure centres).

584. Various forms of counselling, care and assistance are provided by cantons and by the social services in communes, regions and cantons to the public at large, and particularly to more socially disadvantaged parents and children. In addition, all cantons have counselling services to detect development problems in infants and young children or special circumstances that might require intervention by specialists in various fields. The chances of detecting social problems increase once a child has reached school age, and there is a correspondingly greater range of measures that can be taken by services and institutions to encourage children and parents, or to provide educational, psychological or social support.

9. International cooperation

585. Switzerland is actively involved in international cooperation at various levels, including the Council of Europe, OECD and UNESCO.

586. The Conference of Directors of Education has also issued a number of recommendations encouraging exchanges in the area of education and training of school students, apprentices and teachers.[431] The cantonal authorities, for example, are advised to consider making exchanges with Switzerland's other language regions and with other countries part of the curriculum in compulsory and post-compulsory education, vocational training of apprentices and teacher training. Fondation CH, for example, is very active in the area of youth exchanges.

B. Aims of education (art. 29)

587. Generally speaking, cantonal legislation sets forth the aims of education and the goals and objectives of each level of education.

588. In broad terms, the aims are as follows: the public education system provides support for the family in educating children; contributes to the harmonious development of children's abilities; inspires a willingness to show tolerance and act responsibly towards other people and the environment, as well as display an understanding of other languages and cultures; and

transmits to every child the knowledge and abilities needed as a basis for vocational training, attendance at other schools and lifelong learning.[432] Thus cantonal policy is to set educational goals which by their nature oblige the school to act as a support to children and young people as they mature.

589. Article 5 of the new Ordinance on the Recognition of Maturité Certificates (ORM)[433] sets forth a number of aims of education: schools issuing maturité certificates are expected to enable students to acquire sound basic knowledge appropriate to the secondary level and develop an open and discerning mind. In particular, they should prepare students for the responsibilities they will assume in society and develop their intelligence, self-discipline, ethical and aesthetic sensibilities and physical abilities. Students should be capable of acquiring new knowledge and developing curiosity, imagination and an ability to communicate and to work alone or in a group. They should learn a national language and attain a reasonable level in other national and foreign languages, and learn to discover the richness and characteristics of the cultures transmitted by those languages. Students should be capable of understanding their place in the natural, technological, social and cultural world they live in, at both the Swiss and the international levels, and in both contemporary and historical terms. They must prepare to shoulder their responsibilities towards themselves, others, society and the environment.

590. Teachers have a certain amount of freedom, within the legal framework, to decide what methods they will use to implement educational guidelines and curricula. The attainment of these educational goals and the encouragement children and young people are given to achieve personal autonomy is an outcome of the inherently respectful approach teachers adopt in their work with individual students.

591. All the cantons emphasize pluralism in teaching methods and approaches in public education today. Action-oriented teaching and an extensive range of types of education form children's character and develop their independence, their willingness to cooperate, their decision-making abilities and their judgement. Many cantons also develop and promote students' personal autonomy and encourage the establishment of class assemblies.

C. Leisure, recreation and cultural activities (art. 31)

592. Although not explicitly enshrined in Swiss law, every child in Switzerland naturally has the right to rest and leisure, to engage in play and recreational activities appropriate to his or her age and to participate freely in cultural life and the arts.

593. Given the importance of leisure and cultural activities in children's lives, it is essential that they should be accessible to all children and young people. Financial aid is therefore offered to disadvantaged parents who wish to enable their children to develop their non-academic abilities (music, art, sport, etc.). In addition, subsidies from the authorities enable groups or associations such as sports federations and music or youth clubs, to offer a wide range of activities at low rates or even free of charge. Various music schools and other institutions have sliding scales for rates depending on income.[434] In addition, many associations offer family discounts. It is also possible to apply to private foundations and organizations such as

Pro Juventute and the Red Cross, or cantonal or local funds. The cantonal regulations on grants enable artistically or musically talented young people from disadvantaged families to obtain appropriate training if long studies are needed.

594. Youth policy, too, falls mainly within the jurisdiction of the cantons and the communes. The Confederation has only limited competence in this area, but that includes the provision by Parliament of an annual appropriation - which in recent years has amounted to around Sw F 7 million per year - under the Youth Activities Act (LAJ) of 6 October 1989.[435] This Act, allows support to be given to leisure-related organizations and national-level projects, provided that the extracurricular youth activities in question involve games or sport, health, nature and the environment, training, culture or society. Nearly 130 organizations receive LAJ grants, including the Pro Juventute foundation.

1. Play areas and space to move around freely

595. Efforts are continually being made throughout Switzerland to improve play areas and open spaces that permit children's personal development, around their home, in school playgrounds and in public areas and parks. To that end, many towns are attempting to reduce road traffic in residential areas.

596. A study on children in towns carried out as part of a national research programme on traffic in towns confirmed that the residential environment has a considerable influence on children's everyday life and development.[436]

2. Children, the media and leisure activities

597. In April 1997, the Swiss radio and television research service (SSR) published a study on the place of the media in the daily life of children aged 5 to 14.[437] The study was based on a survey of 2,003 children and their parents that was carried out using the Télécontrol electronic ratings system. It yielded some very interesting results, as detailed below.

598. In terms of frequency of use, television remains the medium of choice for Swiss children in this age group. Radio holds little interest for young children and acquires importance only when they get older and become interested in music.

599. Swiss families are very well equipped with electronic media appliances: 98 per cent of Swiss families have a television; 30 per cent of children have electronic games that can be connected to the television; half of the children have their own GameBoy or video game such as Nintendo or PlayStation; nearly one third of them have access to a personal computer; and 80 per cent of families have a video cassette recorder.

600. Children prefer to play outdoors.[438] Television or video films were second choice, followed by indoor games. Media-based activities - chiefly watching television or video cassettes, listening to music, playing GameBoy and reading - are becoming increasingly important, or at least more and more children are expressing increasing interest in such activities.

601. The following is a fairly typical daily routine: on weekdays, children spend a good five hours a day at school, and the return journey takes around three quarters of an hour. They sleep around ten and three quarter hours. Homework and help with housework account for another 50 minutes and meals another one and a half hours. They spend four hours getting dressed or washed or being around the house in general. The rest of the time is spent as follows: one hour a day playing outdoors, one hour doing sport (or, if not, playing outdoors), half an hour going for a walk or shopping with their parents.

602. Children spend considerably more time in front of the television at the weekends, but also seem to use their free time at weekends to play. Nearly one in two children play outdoors and on Sundays spend three and a half hours outside.

603. Nearly half of all children spend more than two hours during the week doing some sport, and up to three and half hours on Sundays.

3. Sport

604. Article 68 of the Constitution stipulates that the Confederation shall promote sport, and particularly sports education. It may also legislate on youth sport and may make sports education in schools compulsory.

605. As regards the range of activities available to children and young people, Switzerland also observes the International Charter of Physical Education and Sport, adopted by UNESCO in 1978, which provides that every human being has a fundamental right of access to physical education and sport, which are essential for the full development of his personality.

606. The public sector therefore also has responsibility for the following areas:

Youth and Sport (J+S), a joint institution of the Confederation and the cantons, aims to promote sports activities for young people aged between 10 and 20. J+S tries to motivate as many young people as possible to take up a sport, to develop their skills in their chosen sport, to practise their sport independently and to make sport a part of their way of life. Nearly 850,000 young people take part in the Youth and Sport programme every year. Every canton has a Youth and Sport office, which promotes a wide range of sporting activities and many regions and communes offer children and young people "holiday passport" activities during the summer;

In schools, there are three hours of compulsory sports per week at all levels. As well as compulsory lessons, many schools offer sports as part of a range of options for students, and this also provides an opportunity for contact with private sports clubs;

The Confederation invests Sw F 100 million a year in sport at various levels, of which Sw F 65 million is allocated to youth sports;

A significant proportion of the Sw F 900 million spent by cantons and communes on sport also goes to youth sports;

Sports that are organized privately, with financial support from the Confederation for training of coaches, make special provision for children and young people, working closely with J+S. The sports programmes of such clubs and of J+S are open to Swiss nationals and to foreigners.

607. In 1997, the Federal Office for Statistics conducted an inquiry into health, from which it emerged that 44.8 per cent of young people aged between 15 and 17 found their leisure time very satisfying; 49.5 per cent found it quite satisfying; 5.4 per cent not particularly satisfying; and 0.3 per cent not at all satisfying. As to whether they enjoyed gym, keep-fit and sports, 81.1 per cent said they did and 18.9 said they did not. As regards sports clubs, 31.1 per cent of 15 to 17-year-olds said they went several times a week; 16.3 per cent said they went once a week; 5.5 per cent between once and three times a month; 5.3 per cent less than once a month; and 41.9 per cent said they never went to sports clubs.

4. Culture

608. Like education, cultural activities are primarily a matter for the cantons and the communes. Only occasionally does the Confederation organize cultural activities. The Constitution stipulates, however, that the Confederation may support cultural activities of national interest and encourage art and music, in particular in the field of education (art. 69).

609. The Pro Helvetia foundation, which is entirely funded by the Confederation, is responsible for cultural activities at the federal level in Switzerland and abroad. Such activities include support for contemporary cultural production in Switzerland and also promotion of cultural exchanges within the country, among the four indigenous linguistic cultures (French, German, Italian and Romansh) and between the indigenous and immigrant populations. The foundation's principal task - one to which it devotes more than two thirds of available resources - is, however, to develop cultural relations with other countries. This work includes North-South cultural exchange programmes. Pro Helvetia is especially active in the countries of central and eastern Europe, and in four of them (Czech Republic, Hungary, Poland and Slovakia) it has opened centres to promote targeted East-West cultural exchanges and provide support for local cultural projects.

610. As to the cantons, they support children's and young peoples' artistic and cultural development, particularly in the areas of music, art and theatre. Many of these activities are also encouraged and supported as school subjects (music, art, drama, etc.). Every canton also has private clubs and groups providing activities for children and young people, which the authorities support either through funding or by providing services. In the area of music, the cantons and communes award sizeable grants to music schools and academies and their various departments.

611. Many of the cantons find other means of providing incentives for specific cultural activities for children and young people, as can be seen from the following examples:

In the canton of Geneva, the Education Department has an extracurricular activities service (service de loisirs) attached to it. Plays and concerts are organized in schools; school students are given educational support in museums; artists invite school classes into their studios; and cultural organizers in such areas as music, dance, singing, theatre and cinema clubs, receive grants for their work with young people;

The city of Lucerne employs two people, each on a half-time basis, dealing with children's and young people's activities respectively. The canton of Lucerne has set up an information and coordination network with youth directors in the various communes. Six youth councillors from Pro Juventute are at the disposal of schools and authorities to help create areas for recreation and games. The canton provides support for a contact centre for children's and young people's theatres;

The canton of Solothurn provides advice and support for some 35 projects every year, under its ordinance on cantonal aid to youth;

As bilingual cantons, Valais and Fribourg encourage exchanges between their linguistic communities and language holidays for children and young people in an area of the canton where the other language is spoken;

Basel supports a wide variety of leisure and sports activities, including special gymnastics for children with coordination problems. The canton also provides sizeable financial incentives to youth theatres, choirs and music groups;

Under its law on sport and coordination of youth activities, Ticino recognizes and provides longer-term support to extracurricular initiatives and activities. The canton's Youth Office coordinates activities for young people, conducts needs analyses and initiates projects accordingly, promotes youth leader training and ensures appropriate publicity. Parents, young people, teachers, authorities and clubs can obtain full information on extracurricular activities, holiday camps, and other youth activities throughout the canton, through the "Infogiovani" project. The canton of Ticino has also established a legal framework for support to holiday camps, the use of State buildings and facilities free of charge, the promotion of culture - libraries in particular, and the provision of support for language holidays in German- and French-speaking Switzerland.

VIII. SPECIAL PROTECTION MEASURES

A. Children in situations of emergency (arts. 22, 38 and 39)

1. Refugee children (art. 22)

612. In Switzerland the problem of juvenile asylum-seekers has led the authorities to undertake a detailed examination of all its aspects and to adopt various detailed measures intended above all to improve the protection of this category of foreigners and to ensure the

proper application of appropriate asylum procedures. Not only political circles but also the competent legislative authorities at the federal and cantonal levels (cantonal tutorship authorities, cantonal immigration authorities, the Federal Office for Refugees (ODR), the Federal Commission for Refugee Questions and the Swiss Asylum Appeals Commission (CRA)) have manifested their firm intention to find solutions to specific difficulties raised by foreign juveniles, and above all unaccompanied juvenile asylum-seekers (RMNAs) asking Switzerland for protection. The measures adopted in this context, some before 26 March 1997, the date on which the Convention entered into force for Switzerland, either with a view to specifying the application of certain existing norms or introducing new rules covering juvenile asylum-seekers, are based essentially on the principle of the best interests of the child, which is embodied in article 3 of the Convention, as well as various obligations to provide protection and assistance under treaty law, and in particular under article 22 of the Convention.

613. A few words should be said in explanation of the role played by the Federal Commission for Refugee Questions,[439] whose functions are basically those of an advisory body for the federal authorities. In order to obtain an overall view of migration policy, the Commission evaluates the asylum and refugee situation and adopts positions on related questions with ramifications in the political, legal humanitarian and social sectors. It submits recommendations to the Government. At the present time the Commission has 22 members from the political and economic spheres, cantonal authorities, social security and the church. Its secretariat is provided by the Federal Office for Refugees.

(a) Statistics

614. During 1996, 5,463 foreign juveniles (including those seeking family reunification) requested asylum in Switzerland. The corresponding figure was 6,997 for 1997, 12,626 for 1998 and 15,537 for 1999. From January 1996 to the end of December 1999, about 65 per cent of juvenile asylum-seekers were male. Over the same period, about 30 per cent of the total number of asylum-seekers were juveniles. The number of RMNAs was about 700 in 1996 (over 12 per cent of the total number of juvenile asylum-seekers in 1996), 1,300 in 1997 (over 18 per cent of the total number of juvenile asylum-seekers in 1997), 2,500 in 1998 (over 20 per cent of the total number of juvenile asylum-seekers in 1998) and 1,800 in 1999 (over 11 per cent of the total number of juvenile asylum-seekers in 1999). Over 95 per cent of unaccompanied foreign juveniles who requested asylum in Switzerland between 1996 and 1999 were between 15 and 18 years of age. The main countries of origin of juvenile asylum-seekers were Yugoslavia, Albania, Bosnia and Herzegovina, Turkey, Sri Lanka, Somalia, the Democratic Republic of the Congo, Angola, Iraq, Guinea, Ethiopia, Sierra Leone and Guinea-Bissau.

615. As regards recognition of refugee status and the grant of asylum, 1,138 foreign juveniles (including those seeking family reunification) had their requests granted in 1996, 1,376 in 1997, 1,059 in 1998 and 1,141 in 1999. From January 1996 to the end of December 1999, the number of requests for asylum granted to children and young people under 18 years of age represented over 50 per cent of the total number of requests granted by the ODR. Most of the juvenile asylum-seekers who were granted asylum in Switzerland during this period were from Yugoslavia, Bosnia and Herzegovina, Turkey and Iraq.

616. Moreover, a large number of juvenile asylum-seekers who failed to obtain asylum were authorized to stay on Swiss territory, being granted temporary admission, mainly because of obstacles hampering their return to their country of origin or provenance. A total of 2,063 foreign juveniles (including those seeking family reunification) were granted temporary admission during 1996; the corresponding figure for 1997 was 1,161, for 1998 it was 2,618 and for 1999 it was 9,002. The number of juvenile asylum-seekers granted temporary admission between January 1996 and the end of December 1999 represented over 40 per cent of the total number of temporary admissions granted. The majority of juvenile asylum-seekers admitted temporarily to Switzerland during this period were from Somalia, Sri Lanka, Bosnia and Herzegovina, Yugoslavia, Angola, Turkey and Iraq.

(b) Legal framework

617. Switzerland is a party to the United Nations Convention of 1951[440] and to the Protocol of 1967[441] relating to the Status of Refugees. Switzerland has also acceded to the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. Moreover, it also takes into account other instruments, such as the Guidelines on Protection and Care of Refugee Children, adopted by UNHCR in 1988 and amended in 1994, and the Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum, adopted by UNHCR in 1997.

618. Moreover, certain rules of precedence regarding international law and domestic law determine the legal system applicable as well as the authority that is competent to rule on questions involving the exercise of civil rights and protection. Under of the Federal Act of 18 December 1987 concerning Private International Law (LDIP)[442] and the Hague Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of infants,[443] the question of the exercise of civil rights and that of protection are, apart from certain exceptional situations (such as acquisition of the exercise of civil rights before arrival in Switzerland), governed by Swiss law, and more specifically by the Civil Code, and the Swiss authorities are in general competent to take the necessary decisions in these fields.

619. Federal asylum legislation (Federal Asylum Act (Lasi)[444] and Ordinance 1 on asylum procedures (OA 1)[445]), the completely amended text of which entered into force on 1 October 1999, now contains specific provisions guaranteeing that adequate account will be taken of the special situation of RMNAs in asylum proceedings (article 17 of the Act and article 7 of the Ordinance). Moreover, as indicated in the commentary concerning article 10, the Federal Asylum Act contains provisions on family reunification and respect for the principle of the unity of the family.

(c) Participation in asylum proceedings

620. In Switzerland, participation in asylum proceedings by any juvenile, regardless of age, seeking asylum personally or through a representative, constitutes a basic principle. In other words, any juvenile asylum-seeker capable of forming his or her own views can personally submit a request for asylum to the competent authority. Juveniles incapable of forming their own views may act through a representative because, in accordance with the provisions of civil

law, the submission of a request for asylum is regarded as a strictly personal right which may be exercised through a representative. A request for asylum may therefore be submitted by the representative of a person incapable of forming his or her own views because he or she is too young.

(d) Asylum proceedings in the presence of accompanied minors

621. It may be noted that, in the conduct of asylum proceedings, if the juvenile applicant is accompanied - especially by one or both parents - he or she will in principle be included in the request for asylum submitted by the person or persons accompanying him. However, since the principle of personal procedure prevails in Switzerland, any juvenile asylum-seeker having grounds for seeking asylum may present them either personally or through a representative. In application of the rules governing family reunification matters, and in accordance with the principle of the unity of a family, when refugee status is granted to the parents of a juvenile applicant, the latter will in general also be recognized as a refugee. The temporary admission of a member of a family stricto sensu will also in principle result in the temporary admission of other members of that family.

(e) Asylum proceedings involving RMNAs

622. In matters of asylum, the Swiss authorities focus mainly on the most vulnerable juvenile applicants, namely RMNAs. For this reason, the most recent provisions adopted in this area concern this group of asylum-seekers in particular. From the outset of the asylum procedure, the competent authorities are required to take into account all factors connected with the fact that the applicants are juveniles and to apply certain measures specific to them.

623. For example, the Registration Centre (CERA), which will in principle be the first service of the ODR to have contact with the juvenile applicant, will at times have to make certain inquiries (and particularly arrange a medical examination) to determine the age of the applicant if this is not sufficiently clear and if there are serious doubts about his or her alleged age, particularly because of appearance or behaviour. In this context, the cantonal tutorship authorities, the authorities responsible for the protection of all minors residing in their territory, have noted that a number of applicants have claimed to be minors on their arrival in Switzerland in order to benefit from rules applying to RMNAs only, whereas in point of fact they had already attained the age of majority. As a result, applicants were wrongly placed in reception centres reserved for minors or erroneously placed in the school system at a level reserved for juveniles; this inevitably gave rise to certain difficulties of a relational and organizational nature. On the other hand, some asylum-seekers have tried to make out that they were older than they actually were in order to show that they were old enough to exercise a gainful activity (minimum legal age fixed at 15 years according to the Federal Act concerning Work in Industry, Crafts and Commerce).[446] It was therefore in an effort to provide as much protection as possible for the best interests of genuine juvenile applicants that measures to determine age were introduced at the outset of the procedure, in close cooperation with the tutorship authorities, as a means of rapidly detecting obvious abuses.

624. It is also the duty of the CERA to give a first hearing to the juvenile applicant, if he or she appears to be capable of forming his or her own views, in order to collect the maximum amount of personal and family information (family ties and situation in the country of origin, persons responsible for his or her maintenance and development, etc.), as well as basic information about why he or she left the country of origin. This is done in particular to enable the authorities, if necessary, to conduct rapid inquiries in the RMNA's country of origin or provenance in order to trace family members. If dealing with a young child whose capacity for forming his or her own views is doubtful or completely absent, the CERA will, if necessary, endeavour to clarify matters with any person who accompanied him or her to Switzerland or with the assistance of relatives. The findings concerning the RMNA's degree of development are recorded in a form that is always included in the file. This document, as well as the data obtained at this stage of the procedure, constitutes a valuable source of information for the cantonal authorities, enabling them to adopt without delay the protection measures necessary and to take suitable action. Every effort is made to ensure that the RMNA spends as little time as possible at the CERA. It is there that juvenile applicants are given a medical examination by a health service in order to detect any diseases as quickly as possible and immediately to provide any necessary treatment. They are then assigned to a canton. In selecting the canton, account is taken of the possible presence of relatives in Switzerland as being in the interests of the minor.

625. Article 17 of Lasi states that the cantonal authorities are required immediately to assign to every RMNA a representative to protect the interests of the child throughout the asylum procedure. Matters reflecting the special status of juvenile applicants during this procedure and relating in particular to protection, the appointment of a representative and his or her role, the conduct of hearings and methods of evaluating age, are regulated by an executing ordinance under the amended Act, namely, the new Ordinance 1 concerning Asylum Procedure,[447] as well as Asylum Directive 23.2 drawn up by the ODR.[448] Article 7 of this Ordinance states that any unaccompanied juvenile applicant must be assigned a tutor or guardian by the cantonal authority in accordance with the Civil Code. Under the provisions of the Civil Code, the cantonal immigration authorities are required to notify the competent tutorship authority immediately of any minor who is not under parental authority so as to enable it to apply a legal protection measure without delay. This normally consists in the appointment of a tutor (if the parents have disappeared or died) or guardian. If a protection measure of this kind cannot be applied immediately, the cantonal authority is required to appoint a trustworthy person without delay to assist the RMNA throughout the various stages of the asylum procedure until such time as a tutor or guardian is appointed.

(f) Assistance, support and accommodation

626. Questions of organizing assistance, support and accommodation are under the jurisdiction of the cantons. Juvenile applicants (and especially young RMNAs) may be placed in foster families or in centres, depending on their age and degree of development. These centres are managed by persons, and in particular social assistants, who have received adequate training enabling them to perform the functions involved. In this case, the Confederation provides the canton in question with a daily amount covering assistance and support costs as well as another daily amount to defray accommodation costs. If the cantonal authorities consider it necessary to

place an RMNA in a specialized public-interest institution, the expenditure involved is also in general defrayed by the Confederation. In addition it reimburses the cantons the amounts they spend on assistance to asylum-seekers admitted temporarily and also, if necessary, defrays the cost of assisting foreigners to whom asylum has been granted until such time as they have obtained a residence permit. In this case, the cost of assisting refugees is subsequently assumed by the cantons. Arrangements have been made by the authorities enabling refugees at any time to call upon a mutual assistance organization of their choice for the assistance and advice they need to facilitate their integration in Switzerland. It may be added that all asylum-seekers are insured under the sickness insurance system (LAMal) and that the Confederation pays the premiums as well as deductibles, except if the person concerned exercises a gainful activity. The same is true of medically necessary dental treatment.

(g) Schooling and training

627. Matters concerning the schooling of juvenile applicants are under the jurisdiction of the cantons, which defray its cost. Generally speaking, the juvenile applicant begins his or her primary or secondary education within three months of arrival in Switzerland unless a negative decision by a court of first instance has been handed down in the meantime and there is a likelihood that he or she will shortly be returned to the country of origin or provenance. Juvenile applicants are in principle assigned to special classes where they follow courses in the language spoken in their place of residence in Switzerland; they are then gradually integrated into normal classes. The schooling of juvenile applicants beyond the age of compulsory education is also under the jurisdiction of the cantons. However, in order to promote and keep up the social skills of young applicants and to facilitate their reintegration, the Confederation subsidizes training programmes, and, in particular, programmes to assist in their return in the form of modules, each lasting about six months and designed to promote a professional outlook among young applicants. The purpose of these programmes, which should be organized so as not to complicate possible return procedures, is to upgrade their skills prior to their return should they fail to satisfy refugee status requirements. They are generally preceded by courses in the language spoken in their place of residence in Switzerland.

(h) Hearings on why a request for asylum is made

628. During the next stage of the asylum procedure at the cantonal level, following the appointment of a representative, the cantonal immigration authorities arrange detailed hearings for RMNAs who are clearly capable of forming their own views and who are therefore able to grasp the meaning and purpose of asylum procedure at which they are asked to explain why they are requesting asylum and what reasons and fears led them to leave their country of origin. In this connection, article 7 (7) of the Asylum Ordinance as well as the ODR's Directive of 20 September 1999 state that the person conducting the hearings should do everything possible to ensure that they take place in suitable circumstances and that all questions specific to minors are dealt with or clarified adequately. It may be added that in Switzerland a representative of a mutual assistance organization recognized by the Confederation participates in principle in all hearings of this nature as an impartial observer.

629. RMNAs whose capacity for forming their own views is doubtful or lacking are not given hearings by the cantonal authorities on their reasons for requesting asylum; their file is transmitted directly to the competent ODR service. Their capacity for forming their own view will then be determined in cooperation with the applicant's representative. If their capacity is recognized, the federal official responsible for dealing with the file can arrange the hearing in conjunction with colleagues who have received training in psychology or special education, as well as with lawyers who are experts in the problems of minors; he may even refer the file directly to them, in which case they themselves arrange the hearing. In cases where the juvenile applicant is not capable of forming his or her own views, an interview or an exchange of correspondence takes place between the ODR and the juvenile's representative in order to confirm that a request for asylum has been submitted on behalf of the RMNA and to establish the facts jointly. In this context, any relatives that the RMNA may have in Switzerland are also heard regarding the minor's reasons for requesting asylum. Other inquiries, such as requesting information from the Swiss Embassy in the country of origin or provenance, may also be initiated.

(i) Evaluation of the question of return and temporary admission

630. If the RMNA fails to satisfy the conditions for refugee status, it is for the ODR to elucidate in an adequate manner the various aspects of minority (namely, age and degree of independence, and actual social and economic conditions in the country of origin) as well as, if necessary, certain medical aspects, from the standpoint of whether return would be lawful, mandatory or possible in accordance with its Directive of 20 September 1999 concerning requests for asylum submitted by juvenile unaccompanied applicants and adults incapable of forming their own views and the case law of appeal authorities on the subject. Under the Federal Act concerning the Permanent and Temporary Residence of Foreigners (LSEE),[449] the foreigner's return to his or her country of origin or provenance is not lawful if it is contrary to Switzerland's commitments under international law. Furthermore, return cannot reasonably be required if it implies real danger for the foreigner.

631. According to the case law of the Asylum Appeals Commission, the principle of the best interests of the child embodied in article 3 of the Convention carries considerable weight in the examination of the possibility of enforcing return. In this context, the appeals authority has stated that respect for this principle implied taking into account the following specific factors connected with the personality of the child and his or her situation: age, degree of maturity, degree of dependence, the type and nature of his or her relationships (degree of kinship and intensity and firmness of bonds) in the country of origin and in the host country, the characteristics of the persons in question (particularly their willingness and ability to provide maintenance), the present degree of development/training and future possibilities in this respect, the degree of integration achieved as a function of the length of stay in Switzerland, as well as possibilities of reintegration in the country of origin and possible obstacles. At this stage of the procedure, any problems likely to arise in connection with care and support in the country of destination are therefore examined and any investigations regarded as necessary carried out. The Swiss authorities may thus be led to undertake inquiries in the country of origin in order to determine whether there are any relatives, other persons or bodies capable of providing care and

support to the RMNA until he or she attains the age of majority. Such inquiries are regularly carried out through the diplomatic channel. To this end the ODR may also request assistance from international organizations such as ICRC (through a "tracing request") or UNHCR, and may provide them with the information needed to try to track down members of the family in agreement and in cooperation with the RMNA and his or her representative. The success of such inquiries depends to a great extent on the reliability and accuracy of the information supplied by the juveniles themselves. If, on completion of this procedure and after having evaluated all the points mentioned above, the ODR considers that the return of a juvenile applicant cannot be enforced, he or she will be granted temporary admission, thereby enabling him or her to continue to stay in Switzerland and to be covered by the protection measures provided under Swiss law for any minor temporarily or permanently deprived of the family environment.

(j) Enforcement of return

632. If the return of the juvenile applicant has been found to be enforceable, the need for arrangements connected with the return trip (escort, financial assistance, reception on arrival, transport within the country of destination, etc.) is examined by the cantonal authorities in cooperation with the ODR. The need for such measures is evaluated in the light of various considerations, such as age, degree of independence, place of destination and any other factors suggested by the file. In this context, a federal directive provides for the possibility of granting, subject to certain conditions, financial assistance to the minor on his or her return in order to facilitate reintegration or integration in the country of origin or provenance. Furthermore, any decision by the ODR rejecting the juvenile applicant's request for asylum and ordering return may be appealed to the Swiss Independent Asylum Appeals Commission within 30 days of its notification.

(k) The continuing training of persons working in this sphere

633. As regards the continuing training of persons involved in one way or another in the processing of juvenile applicants, and in particular those working in the fields of assistance, support and accommodation, or who participate in the asylum application procedure, it may be noted that the ODR - sometimes in cooperation with other bodies - regularly organizes seminars at which various aspects of this delicate problem are tackled. Such persons can also submit specific requests in connection with various aspects of their work and even request advice on ways of resolving the difficulties they encounter in connection with juvenile applicants from ODR lawyers specialized in this field and responsible for compiling and organizing comprehensive documentation on the subject. These lawyers themselves participate in various symposiums and training courses dealing in particular with the implementation of the Convention and are subsequently called upon to make the persons referred to above aware of the rights of the child contained in the Convention and the implications for asylum. They are also required to evaluate the mechanisms created in this context and, if necessary, propose any modifications that might be necessary. A study covering all aspects of the problem of juvenile unaccompanied asylum-seekers has been incorporated in the ODR manual of in-house asylum procedures, an essential tool for all persons involved in asylum procedures which is also distributed to all the ODR's other services.

2. Children affected by armed conflicts (art. 38) and readaptation measures (art. 39)

(a) Switzerland's activities on behalf of child victims of conflicts

634. In accordance with its tradition and humanitarian commitment, particularly as a State party to the Geneva Conventions of 12 August 1949 on the protection of victims of war[450] and their Additional Protocols of 1977,[451] Switzerland attaches the greatest importance to the fate of victims of war and, in particular, children.

635. Children are singularly exposed to the consequences of armed conflict: they are extremely vulnerable victims and they also participate in fighting in various parts of the world. For these reasons, Switzerland is endeavouring to ensure that children enjoy even greater specific protection in armed conflicts.

636. Switzerland's activities on behalf of child victims of armed conflict include the following:

Switzerland is working closely with the following international organizations active in this field and finances their activities: the United Nations Children's Fund (UNICEF), the Office of the United Nations High Commissioner for Refugees (UNHCR) and the International Committee of the Red Cross (ICRC). Since 1997 Switzerland has made significant contributions to the Special Representative of the Secretary-General on the impact of armed conflict on children to support his awareness-raising activities and promote the demobilization as well as the reintegration of child soldiers into society;

Switzerland also supports the work of non-governmental organizations, such as the Coalition pour mettre fin à l'utilisation d'enfants soldats (Coalition to Stop the Use of Child Soldiers), in order to increase the international community's awareness of the situation of such children. It has, for example, participated in regional conferences on the use of child soldiers organized by the Coalition in 1999 and 2000 (in Africa, Latin America, Europe and Asia) and has to a large extent financed them;

Switzerland has been trying for several years to get OSCE to pay special attention to the protection of the rights of the child, particularly in the context of armed conflict. It initiates and participates in a large number of activities and measures taken in this context;

The protection and promotion of the rights of the child affected by armed conflict constitute a priority for Switzerland in connection with preparations for the special session of the General Assembly on children for follow-up to the World Summit for Children to be held in New York in autumn 2001.

Switzerland is convinced that, in order to ensure better protection for children, it is important that the age limit for recruitment - whether voluntary or compulsory, by regular armed forces or by armed opposition groups - as well as the age limit for direct or indirect participation in armed conflict should be raised to 18. It has accordingly

participated actively in the elaboration and adoption of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (January 2000) in the United Nations working group responsible for this question. It signed this instrument in September 2000 and is seeking its universal ratification and effective implementation;

Switzerland has also taken an active part in the elaboration of other international legal instruments aimed at improving the protection accorded to child victims of conflicts such as the ILO Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No. 182), which Switzerland ratified in June 2000;

Furthermore, Switzerland has supported the inclusion in the Rome Statute of the International Criminal Court[452] of an explicit reference to the conscription, recruitment and use of children of under 15 as a war crime;

Conscious of the particularly great danger for children presented by anti-personnel mines, Switzerland ratified the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and their Destruction on 24 March 1998.

Lastly, mention should also be made of the fact that, on the occasion of the tenth anniversary of the United Nations Convention on the Rights of the Child (20 November 1999), the DFAE organized a multimedia exhibition entitled "Children sacrificed: children in war" at Bern. A large number of children and young people were thus made aware of the tragic situation of child victims of armed conflict, and in particular child soldiers.

(b) The Swiss declaration

637. Children are provided with less protection under the Convention than under the Protocol Additional to the Geneva Conventions of 1949 relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II).[453] Since article 38 of the Convention fails to increase the protection already accorded to children in armed conflicts by the provisions of international humanitarian law in force, Switzerland made a declaration when it became a party to this instrument, referring expressly to the duty of every State to apply the standards of international humanitarian law and national law insofar as they provide the child with better protection and assistance in armed conflicts.

(c) Military service in Switzerland

638. Every male Swiss citizen is required to do military service. Swiss female citizens may volunteer to do so. On the basis of the militia system, Swiss military service comprises a number of different stages. The recruit first attends a school for recruits (15 weeks), subsequently supplemented by a series of refresher courses, sandwiched in between periods of civilian life, whose duration and frequency vary. Persons who, at the school for recruits, are selected for

training as non-commissioned officers and, following further selection, training as higher-level non-commissioned officers or officers, attend a more comprehensive course. In addition, each citizen required to perform military service has to participate in compulsory shooting practice at regular intervals in addition to his service.

639. The Swiss Federal Act concerning the Army and Military Administration of 3 March 1995,[454] states that persons subject to military service have to enlist as recruits. The Federal Council's Ordinance concerning the Recruitment of Conscripts of 17 August 1994[455] states that all men required to perform military service who turn 19 during a given year are enlisted by conscription.

640. There are, however, a number of variations. For example, under article 103 of the Federal Act on Aerial Navigation concerning measures to encourage the training of young pilots, preparatory aeronautics courses are organized at appropriate private flying schools. Candidates should register at the latest by 31 December of the year during which they reach the age of 16 (exceptionally 17). However, it is not until they are 19, when they are called up, that pilot candidates are in practice assigned to the Air Force.

(d) Rehabilitation measures

641. To the extent that the civilian population is becoming increasingly involved in armed conflicts, children are also suffering more from the violence engendered by war. Children who experience conditions of this kind need special kinds of therapy. For this reason, Zürich's medical and psychological school service has for several years been following children and young people who have been traumatized by the events they experienced as a result of armed conflicts and migration.

642. At the twenty-seventh Conference of the Red Cross and Red Crescent, Switzerland undertook to promote the rights of the child in armed conflicts, particularly with a view to the demobilization, reintegration and rehabilitation of child soldiers.

B. Children in conflict with the law (arts. 40, 37 and 39)

1. Administration of juvenile justice (art. 40)

(a) Criminal law on minors

643. As has already been mentioned above, the Criminal Code contains special regulations (criminal law on minors) applicable to offences committed by children from 7 to 18 years of age (CP, arts. 82-99).

644. The penalties provided for under criminal law on minors vary in accordance with the age of the child. The possible measures and sentences described below are not in principle cumulative. There are, however, two exceptions to this principle, the first making it possible to order educational measures in addition to detention or a fine, and the second concerning young recidivists or young people to whom a measure has already been applied when continuation of the measure or its modification is not sufficient.

(i) Penalties applicable to children of over 7 but less than 15 years of age (CP, arts. 83-88)

645. In the case of extremely difficult children who have been abandoned or are in serious danger, the court may order the application of educational measures under article 84 of the Criminal Code, in other words educational assistance, or placement in a family or in a reform school.

646. If the condition of the child calls for special treatment, as in the case of mental or other disorders, the court may order special treatment under article 85 of the Criminal Code.

647. In the case of children not requiring an educational measure or special treatment, the court orders a disciplinary penalty under article 87 of the code, namely, a reprimand, interruption of school attendance for up to six half days or work.

648. No penalty is required under article 88 of the Criminal Code if the child has already been punished or a measure applied, if he or she is sincerely sorry for the act - as by making up for it as much as possible - or if three months have elapsed since the time the offence was committed.

(ii) Penalties applicable to children of over 15 but under 18 years of age (CP, arts. 89-99)

649. If the young person requires special educational care, namely, if he or she is extremely difficult, abandoned or in serious danger, the court orders educational assistance or placement in a family or reform school (educational measures under CP, article 91). Placement in an institution of this kind is particularly advisable if the young person is in serious danger or if he or she has committed a crime or serious offence. Under article 93 bis, the enforcing authority may order that the measure should be applied in a centre promoting the work ethic if the young person has reached the age of 17.

650. Special treatment in accordance with article 92 of the Criminal Code is ordered if required by the condition of the young person, namely, if he or she is an alcoholic or drug addict, or suffers from serious physical or psychological disorders.

651. If the condition of the young person requires neither an educational measure nor special treatment, the court can reprimand him or her, require him or her to work, impose a fine, or sentence him or her to imprisonment from one day to one year (criminal penalties under CP, article 95); the sentence is served in a block for young offenders and not in penitentiary institutions for adults. In accordance with article 96 of the Criminal Code, fines and prison sentences may be suspended.

652. If the court finds it impossible to decide whether the young person should be punished or not, it may defer its decision and fix a probationary period of six months to three years (deferment of penalties under CP, article 97). If the probation is a success, the court refrains from imposing any penalty.

653. The court may also refrain from imposing any penalty or measure under article 98 of the Criminal Code if the young person has already been punished, if he or she is sincerely sorry for the act and makes up for it as far as possible, or if one year has elapsed since the date of the offence.

654. It is to be noted that the competent juvenile criminal law authorities (courts, police officers, prison staff and lawyers) are specialized in juvenile law as well as in the psychology of children and young people. Moreover, youth courts do not hesitate to request specialized psychologists and psychiatrists or specially trained social assistants working for the same or a similar service to undertake detailed studies of the situation of young delinquents or of specific problems. In all cantons, educational measures of a fixed duration are applied exclusively in special institutions for children and young people; the staff of these institutions have generally been trained as socio-educators, psychologists or psychiatrists. Cantons without such institutions place children and adolescents in those of other cantons.[456]

(b) Amendment of criminal law on minors

655. As has already been mentioned above, criminal law on minors is being amended. On 21 September 1998, the Government submitted to Parliament a new federal bill on the criminal status of minors,[457] which is at present being discussed in Parliament.

656. Mention should be made of some of the main innovations of the bill. This instrument will not govern the criminal status of minors in parallel with adult criminal law but on the basis of a specific law; the age of criminal responsibility will be raised from 7 to 10 years;[458] the guiding principle that the integration of juvenile delinquents should be achieved through education will be emphasized even more;[459] the range of penalties will be enlarged and made more flexible; and in the matter of criminal procedure relating to minors, which is under the jurisdiction of the cantons, the bill establishes certain general conditions so as to satisfy minimum requirements of legality as regards the procedural status of the young people concerned and their parents.

(c) Statistics concerning offences and penalties[460]

657. In 1997, 9,360 criminal sentences were imposed on children (from 7 to under 15 years of age) or young people (from 15 to under 18 years of age). One third, or 33 per cent, of this number concerned children, and 67 per cent young people, 15 per cent of the children and young people sentenced being girls; 81 per cent of the children and young people had appeared for the first time before a court whereas 19 per cent had been sentenced previously on one or more occasions.

658. This pattern has remained virtually unchanged over the past nine years. One third of the total number of sentences were imposed in the cantons of Zürich and Bern and one half (49 per cent) in the cantons of Zürich, Bern, Vaud and Basel-Land.

659. Over one half (59 per cent) of offences in 1997 came under the Criminal Code (CP), 24 per cent under the Road Traffic Act (LRC)[461] and 11 per cent under the Narcotic Drugs Act (Lstup)[462] while 5 per cent involved offences under other federal laws. A

large majority (69 per cent) of offences under the Criminal Code involved property. Offences against freedom, and in particular unlawful entry of a person's home, accounted for 11 per cent and those against life and physical integrity 8 per cent of the total number of offences covered by the Criminal Code. Two per cent were offences against sexual integrity.

660. As regards trends, the total number of convictions increased from 7,000 in 1989 to 9,360 in 1997. In 1989, 82 people - both Swiss and foreign since no distinction is made between these two categories in the statistics - were sentenced per 10,000 people in the same age group in the resident population. In 1997 the corresponding figure was 103 per 10,000.

661. As regards penalties, most of the 3,000 sentences imposed on children of 7 to under 15 years of age involved disciplinary penalties (80 per cent) - above all work and reprimands. An educational measure was ordered in 7 per cent of cases. The measures applied usually took the form of educational assistance and placement in a reform school. No penalty or measure was imposed in 393 cases (13 per cent).

662. In 1997, 5,423 disciplinary penalties and 504 educational measures were imposed on young people of 15 to under 18 years of age, that is, an educational measure was imposed on 8 per cent and a disciplinary penalty on 84 per cent. In 8 per cent of cases, the penalty was deferred or the judge refrained from imposing a penalty or measure. The measures which were applied most frequently were educational assistance and detention in a reform school. The most common disciplinary penalties involved work (34 per cent of the 5,423 sentences imposed), followed by a fine, suspended or not (26 per cent), a reprimand (24 per cent) and detention (15 per cent). Most of the sentences involving deprivation of liberty were suspended sentences of under 30 days. They represented 62 per cent (517 sentences) of the disciplinary penalties imposed on young people. In 155 cases, the length of detention exceeded 30 days; of this number 35 were mandatory.

2. Treatment of children deprived of liberty (art. 37 (b) (c) and (d))

(a) The right not to be deprived of liberty unlawfully or arbitrarily

663. The Federal Constitution states that no person may be deprived of their liberty except in the cases and in the forms provided for by the law (FC, arts. 31 and 36). In Switzerland these rights are also guaranteed by various international instruments, such as the European Convention on Human Rights as well as the International Covenant on Civil and Political Rights.

664. As may be noted from the information presented above concerning possible penalties applicable to children, deprivation of liberty is a measure taken as a last resort.[463]

665. The specific condition that deprivation of liberty in connection with arrest and remand in custody must be for as short a time as possible is covered by a separate provision of the Federal Constitution[464] namely, article 31 (3) which states that any person remanded in custody has the right to be brought before a judge without delay; the judge decides whether the person is to remain in custody or be released. Moreover, every person remanded in custody has the right to be tried within a reasonable time.

666. In deciding whether the duration of custody has exceeded reasonable limits, the Federal Court takes into account various general criteria, such as the difficulty of the investigation and the way in which it was conducted, and the attitude of the accused.[465] It is to be emphasized in this connection that the Federal Court is of the view that, even when examining authorities cannot in any way be reproached with being slow, detention of a duration approximating the penalty likely to be incurred by the accused cannot be regarded as reasonable.[466]

(b) Obligation to treat the child deprived of liberty with humanity and with the respect due to his or her dignity, separation from adults, the right to see his or her family and to correspond with it

667. Respect for and protection of the human dignity of any human being, regardless of his or her situation, embodied in article 7 of the Federal Constitution, is of special importance in the context of detention and questioning. These rights establish the limits to deprivation of liberty during detention so as to guarantee the development of the individual. Prison regulations must therefore respect certain minimum conditions and make it possible for a prisoner to leave the prison, to receive visits, to wash, to engage in correspondence, etc. Human dignity also implies a guarantee of minimum conditions for personal development, even in situations such as detention.

668. The right of the child deprived of liberty to see his or her family and correspond with it is implicit in the principle of human dignity. It may also be based on respect for private and family life, guaranteed by article 13 (1) of the Federal Constitution, as well as by article 8 of the European Convention on Human Rights.[467] Recognition of this right is also required by article 41 (1) (g) of the Federal Constitution.

(c) Right to legal assistance and the right to challenge the legality of the deprivation of liberty

669. In Switzerland these rights are guaranteed in domestic law by the Federal Constitution as well as at the international level by instruments such as the International Covenant on Civil and Political Rights and the European Convention on Human Rights (arts. 14 and 6 respectively).

670. As regards the right to legal assistance, every accused person, whether of or under age, has the right to exercise his or her means of defence (FC, art. 32 (2)). This right to defence include the accused's right to have sufficient time to prepare a defence in a suitable manner, to defend oneself, to choose a defence lawyer or, if necessary, to have an officially designated defence counsel to question or have questioned prosecution witnesses and, in certain circumstances, to obtain the services of an interpreter free of charge.[468]

671. It may be noted that any person lacking the necessary resources is entitled, to the extent required by the protection of his or her rights and unless the case appears to be completely hopeless, free legal assistance (FC, art. 29 (3)).

672. Moreover, any person deprived of liberty without this measure having being ordered by a court has the right, at any time, to appeal to the court which must, as soon as possible, determine whether such deprivation of liberty is legal (FC, art. 31 (4)).

3. Penalties imposed on minors and in particular prohibition of capital punishment and life imprisonment (art. 37 (a))

673. Switzerland has abolished capital punishment both in time of war as well as in time of peace. This prohibition in domestic law is set out in the Federal Constitution as well as in the Criminal Code and Military Criminal Code. The relevant international instruments to which Switzerland is a party include the second Optional Protocol to the International Covenant on Civil and Political Rights, concerning the abolition of the death penalty, as well as Protocol 6 to the European Convention on Human Rights, also concerning the abolition of the death penalty. By virtue of these provisions the death penalty cannot be reintroduced in Switzerland even in so-called "exceptional" cases. It may be added that Switzerland is very actively engaged at the multilateral and bilateral levels in promoting the universal abolition of the death penalty.

674. The concept of life imprisonment is totally absent from Swiss criminal law on minors. The maximum length of detention is one year and a sentence of this nature can be imposed only on minors of over 15 years of age (CP, art. 95).

4. Physical and psychological rehabilitation and social reintegration (art. 39)

675. In accordance with the Federal Constitution, the Confederation provides the cantons with contributions in connection with educational establishments for children, adolescents and young adults. These contributions are subject to certain conditions, such as the quality and number of active teachers, the application of educational and therapeutic concepts and other quality criteria. In 1999, 189 educational establishments of this nature (for about 4,500 minors and young adults) were recognized and received a contribution of Sw F 72 million in respect of operating expenses. These establishments were provided with an additional Sw F 5 million as a contribution to construction costs. Not only minors and young adults liable to a criminal sentence, but also children and adolescents showing signs of social behaviour disorders and from a family environment which is unable to provide them with an adequate education and training are placed in these establishments.

676. Explanations in connection with this subject are to be found in the commentaries relating to articles 19, 34 and 40 of the Convention.

5. Reservations

677. Switzerland entered a reservation in respect of article 37 (c) of the Convention to the effect that the separation of young people and adults deprived of their liberty is not guaranteed without exception. However, the new federal bill on the criminal status of minors provides for separation in accordance with the Convention both in respect of detention in custody and deprivation of liberty as a measure or penalty. The Government has already announced that this amendment will result in the withdrawal of the reservation to article 37 (c).[469] Article 47 of the bill also states that the cantons have 10 years in which to set up the establishments necessary for the enforcement of sentences and measures provided for under the bill.[470] The withdrawal of the reservation therefore depends on the speed with which the cantons do this.

678. Switzerland has also entered reservations in respect of article 40 of the Convention concerning the guarantee of the unconditional right to assistance and separation, where personnel or organization is concerned, between the examining authority and the sentencing authority; the exception to the right to appeal criminal sentences where the person concerned was tried at first instance by the Federal Court; and the complete exemption from the payment of costs connected with the assistance of an interpreter.

679. The federal bill on the criminal status of minors will entail amendments affecting the reservations to article 40.[471] For example, article 39 (2) of the bill states that although a young person will be assisted by a court-appointed lawyer when necessary, legal assistance will be provided free of charge only when the young person or his or her parents are unable to cover its cost. Withdrawal of the reservation concerning the right to assistance could therefore be considered at the time the bill enters into force.[472] However, it should also be mentioned that Switzerland still understands article 40 (2) (b) (ii) of the Convention on the Rights of the Child as requiring the designation of a court-appointed lawyer not in all cases but only when such legal assistance is indispensable. Since at the present time not all requirements are satisfied by the criminal procedures of the cantons, the reservation is justified. Furthermore, the unification of criminal procedural law, for which the reform of the judicial system has created a constitutional basis and on which preparatory work has already begun, will include criminal procedure applicable to minors. Consultation procedure on a bill on criminal procedure applicable to minors should begin in 2001. This bill will be based on the Convention and will involve the examination of problems raised by the reservations to article 40.

680. Complete separation where personnel or organization is concerned between the examining authority and the sentencing authority within the meaning of the Convention does not correspond to the traditional Swiss concept of criminal law on minors. Many cantonal codes of criminal procedure applicable to young persons countenance the combination of the examining and sentencing authorities in the same person so that the child's requirements can be evaluated properly. The Federal Court has held that the combination in one person of examining and sentencing authority in the framework of criminal procedure applicable to young persons was not contrary to article 58 (1) of the former Federal Constitution and article 6 (1) of the European Convention on Human Rights.[473] So far the European Court of Human Rights has left open the question of whether article 6 (1) of the European Convention on Human Rights regulates criminal procedure applicable to young persons in the same way as that applicable to adults.[474]

681. As regards the right to appeal any judgement before a higher court, the cases under federal criminal jurisdiction in accordance with articles 340 et seq. of the Criminal Code and which are dealt with by the Federal Court at first instance may certainly be appealed on points of law. However, since this may be done only on the basis of procedural irregularities it does not fully satisfy the requirements of the Convention. Switzerland has entered a similar reservation in respect of Covenant II (art 14. (5)); it is not, however, restricted to criminal procedure on minors.

682. The law as it stands does not completely exclude the possibility of minors who have committed offences being brought, by way of exception, before the Federal Court at first instance - a situation which would not be changed by the amendment of the general part of the Criminal Code and the Federal Act concerning the criminal status of minors. It should, however, be noted that the Public Prosecutor of the Confederation in general refers any case in which the accused is a child or young person to the appropriate canton.

683. It is the intention, in the context of the complete amendment of the Federal Act concerning Judicial Organization,[475] to transfer the powers exercised by the Federal Court at first instance to a new federal criminal court whose judgements could then be appealed before the Federal Court. The reservation could thus be withdrawn with the entry into force of the new federal law on the Federal Court.

684. Moreover, Switzerland has formulated an interpretative declaration concerning the child's right to the free assistance of an interpreter (art. 40 (2) (b) (vi)); under this declaration, this free assistance should not be interpreted as enabling the beneficiary to be completely exempt from interpretation costs. Switzerland has also formulated a similar interpretative declaration in respect of the corresponding provision of the International Covenant on Civil and Political Rights (art. 14 (3) (f)), as well as article 6 (3) of the European Convention on Human Rights. In this connection it should be emphasized that Switzerland withdrew its reservation to article 6 (3) (e) of the European Convention on Human Rights in July 2000. The Federal Council will now examine whether a withdrawal of the corresponding interpretative declarations in respect of the Convention on the Rights of the Child and Convention II is justified.[476]

C. Children in situations of exploitation, including physical and psychological recovery and social reintegration (arts. 32 to 36)

1. Economic exploitation, in particular child labour (art. 32)

(a) Principal applicable enactments

685. Among the various national enactments, attention should be drawn to the following:

Federal Act concerning Work in Industry, Crafts and Commerce (LTr);[477]

Federal Act concerning the Duration of Work (LDT);[478]

Federal Act concerning Accident Insurance (LAA);[479]

Federal Act concerning Maritime Navigation under the Swiss Flag (LNM) and its executing ordinance (Ordinance on Maritime Navigation - ONM);[480]

Federal Act concerning Home Work (LTrD);[481]

Federal Act concerning Vocational Training (LFPr);[482]

Federal Ordinance on Vocational Training in Agriculture (OFPA);[483]

Federal Act concerning the Safety of Technical Installations and Apparatus (LSIT);[484]

Ordinance Limiting the Number of Foreigners (OLE);[485]

Civil Code (CC);[486]

Code of Obligations (CO);[487]

Criminal Code (CP).[488]

686. It should also be noted that in Switzerland the greatest possible attention is given to problems relating to young people who engage in high-level sports competition. In close collaboration with all the private and public partners involved in sport, studies, guidelines and a "Charter of the rights of the child in sport" have been formulated. Although these documents have no binding legal effect, they are respected by the parties concerned.

687. Among international enactments, mention should be made of the following:

ILO Minimum Age Convention (No. 138);[489]

ILO Worst Forms of Child Labour Convention (No. 182);[490]

International Covenant on Economic, Social and Cultural Rights.[491]

688. As regards international cooperation, since mid-1998 Switzerland has contributed to, inter alia, two programmes under ILO's International Programme for the Elimination of Child Labour (IPEC) in Pakistan. In 1998, it contributed Sw F 1 million to the Programme.

(b) Minimum age of employment

689. Under the LTr, LDT, ONM and ILO Convention No. 138, the minimum age of employment is set at 15 years. This limit applies to any job and any sector of activity (industry, crafts, commerce, business firms, agriculture, horticulture, fisheries, private households, etc.).

(i) Vocational training

690. As has been explained in the observations relating to education, in Switzerland the commonest form of vocational training is apprenticeship, which is based on a system where the apprentice's training is shared between the school and the firm. The apprenticeship sector is regulated by the Code of Obligations (title X, chap. 2), the LFPr and the OFPA. The LFPr defines an apprentice as "any person aged 15 or over who has been released from school" (art. 9 (1)). Young people aged 14 may, however, be employed for a short period on light work undertaken in accordance with a programme established by the firm or the vocational guidance services (OLT 1, art. 60 (a)).

(ii) Prohibition of dangerous work

691. The Work Act (LTr) - like the ILO conventions - contains minimum-age provisions establishing protection against dangerous work. It provides, in particular, that the employer must have due respect for the health of young people and ensure the protection of morality (LTr, art. 29 (2)). The OLT 1 establishes a general ban on the employment of young people under 19 in the various types of dangerous work listed in its article 54. These include work on machines or transport equipment carrying a high risk of accident or requiring excessive physical effort or mental tension for young people; work carrying a high risk of fire, explosion or accident; the maintenance of machines powered by steam or hot water; servicing and maintenance of pressurized receptacles; and underground work in mines or tunnels. Young people under 18 are also forbidden to serve customers in places of entertainment such as nightclubs, dance halls, discotheques and bars (OLT 1, art. 56 (c)). Other activities, listed in OLT 1, article 55 are forbidden for young people under the age of 16, including work carrying a risk of violent shocks, work involving welding torches and blowlamps, sorting of old materials, work involving exposure to great heat or intense cold, and work involving the lifting, carrying or moving of heavy loads.

692. As regards family firms, the cantonal and communal authorities for the protection of young people, and also school authorities, are required to take the necessary measures in cases of exploitation of children within the family. These measures apply, inter alia, to dangerous work within the context of a family firm. Endangering a child or causing a child physical or mental injury through dangerous work constitutes a violation of the obligation of assistance incumbent on parents and may give rise to the immediate imposition of penalties under the Civil Code or even the Criminal Code.

693. As to other dangerous work, the LDT prohibits the employment of young people under 18 in the goods handling services of public transport enterprises. The LTrD provides that the Federal Council shall determine work which may not be performed in the home. The Ordinance on Home Work (RS 822.311) lists these types of dangerous work (art. 9).

694. The ILO Worst Forms of Child Labour Convention (No. 182), which was ratified by Switzerland on 28 June 2000, sets 18 years as the minimum age for admission to any work which carries a risk of jeopardizing the health, safety or morals of adolescents. This limit is also mentioned in ILO Convention No. 138.

(iii) Light work

695. The Work Act permits a lowering of the minimum age for admission to employment (15 years) for the purpose of certain types of light work which may be performed as from the age of 13 (art. 30, supplemented by OLT 1, art. 59). As from the age of 14, young people may perform undetermined light work. The OLT 1 stipulates that the health and schooling of children must not suffer as a result of this work and that their morals must be safeguarded (art. 60). It should be emphasized that these provisions are in keeping with the requirements of ILO Convention No. 138 (art. 7). The LTr, in article 30 (2), permits the employment of children under 15 only in the context of cultural, artistic or sporting events and in publicity activities.

696. The OLT 1 also regulates the duration of work and the conditions of employment of children under 15. These children may be employed for a maximum of two hours per school day and nine hours a week. During holiday periods, they may be employed only during half of holidays of over three weeks, and for a maximum of 8 hours a day and 40 hours a week. The daily rest period must be at least 12 consecutive hours. Night work and work on Sundays or public holidays are forbidden.

697. The LTr nevertheless permits the regular employment of children under 15 who have been released from compulsory schooling (art. 30 (3)). The employment of such children is subject to authorization in all cantons. Issue of an authorization is subject to the condition that the young person should be in good health, that the work does not risk endangering his or her health and that his or her morals will be protected (OLT 1, art. 61 (3)). In practice, as has been seen above, little use is made of this provision since almost all children of 15 still attend school.

698. Occasional work done by young people in order to earn some pocket money (e.g. baby-sitting or occasional sale of newspapers) is not considered as work proper in Switzerland. This approach is also adopted in the decisions of the ILO supervisory bodies. In addition, the LTr authorizes light work for young people over the age of 13 (art. 30 (2)).

699. As regards artistic activities within the meaning of OLT 1 (art. 56), it is forbidden to employ young people under 16 in cinematographic enterprises, circuses and entertainment companies. The State Secretariat for Economic Affairs, and in particular its Labour Department, in its capacity as the body responsible for the high-level supervision and performance of the LTr, may nevertheless authorize derogations from this article when this is justified by pressing reasons, though only for certain qualified or semi-qualified occupations. The authorizations may be subject to special conditions intended to protect young people (OLT 1, art. 57).

(iv) Domestic work

700. According to the 1990 census, there were some 25,000 people performing domestic work in Switzerland. The situation of domestic workers from abroad is regulated by article 9 of the OLE: the grant of a work permit is dependent on compliance with the normal local conditions of employment, including the provisions of the LTr relating to minimum age. In practice, the authorities supervising enforcement of the OLE do not issue a labour permit to persons under the age of 18. Young foreign nationals of both sexes employed as au pairs can obtain work permits from the cantonal authorities, but only from the age of 17 (OLE, art. 20 (1) (b)).

701. Private domestic servants of members of foreign missions and international officials are not subject to the OLE (art. 4 (1) (d)).[492] The DFAE has issued specific guidelines in this respect, setting at 18 the minimum age for admission to this type of employment. It will issue a residence permit for them only if these conditions are complied with.

(c) Control mechanisms

702. In Switzerland, the inspection machinery operates as follows: employers are required first to comply with the provisions of the laws relating to working conditions and the protection of employees. It is the responsibility of the State to ensure implementation of the international

conventions and national legislation. And it is the labour inspectorate which, by making visits to enterprises subject to the LTr, checks whether the LTr's provisions, and notably those relating to young employees, are being complied with in the enterprise in question.

703. The revision of the LTr was initiated at the time of ratification of ILO Convention No. 138 and has made it possible to extend the provisions of the law on minimum age to sectors hitherto excluded, i.e. agriculture, horticulture, fisheries and private households.

704. In the sectors of agriculture and horticulture, the Agricultural Accident Prevention Service is responsible for supervising the minimum-age provisions in agriculture and horticulture. In addition, it regularly inspects all places where apprenticeship takes place in agriculture and issues authorizations to persons training apprentices.

705. Inspection in the fisheries sector is undertaken by the bodies competent for enforcement of the LTr, in response to complaints. This practice is sufficient, given the fact there are now only about 300 professional fishermen in Switzerland and nearly all of them work in family firms.

706. There is growing criticism of cases of excessive work for certain children within their family. These cases are not covered by Swiss legislation on the protection of employees. These violations of parental authority fall under the Civil Code and must be combated pursuant to the relevant provisions of the Civil Code and the Criminal Code.

707. Private households are subject to the relevant minimum-age provisions of the LTr, firstly for reasons relating to protection of the personality of the child. The LTr supervisory bodies intervene only in response to complaints. The principle of proportionality is thus respected by weighing the protection of private activity against protection of the personality of the child.

708. In the case of the private domestic servants of members of foreign missions and international officials, supervisory possibilities are limited by the privileges and immunities which employers enjoy under the Vienna Convention on Diplomatic Relations of 18 April 1961,[493] the Vienna Convention on Consular Relations of 24 April 1963,[494] and the headquarters agreements concluded by the Government with the international organizations based in Switzerland. These international treaties guarantee the inviolability of the home of this type of employer and grant him or her immunities relating to jurisdiction and enforcement. The Swiss authorities may admittedly make inspections or take administrative measures such as imposing fines, but they encounter difficulties when trying to enforce these measures.

709. Nevertheless, the DFAE ensures compliance with the guidelines it has issued on this subject. It refuses any request for employment of a private domestic servant if the latter has not reached the age of 18. If it learns that a member of a foreign mission or international official has brought from abroad a private domestic servant without its authorization, it requires the employer committing the violation to repatriate, at his or her own expense, the servant to his or her country of origin. It also requires that employment should be terminated in the case of a person employed in Switzerland who does not fulfil the conditions laid down in the relevant

guidelines. It may also take certain measures vis-à-vis the employer such as forbidding the employment of another private domestic servant. In particularly serious cases, it may even go as far as asking the employer committing the violation to leave the country.

2. Use of narcotic drugs (art. 33)

(a) Drugs

710. According to a survey of schoolchildren aged 15 and 16 conducted in 1994,[495] 20 per cent of girls and 26 per cent of boys had taken cannabis at least once. Seven per cent of girls and 10 per cent of boys had taken amphetamines at least once. There had been a sharp increase in relation to the findings of a 1986 survey.

711. According to a study conducted in April 1998 by the Swiss Institute for the Prevention of Alcoholism and Other Forms of Drug Addiction (ISPA) covering 1,019 persons between the ages of 15 and 30, 5.3 per cent stated that they had taken ecstasy at least once and 2.7 per cent said they had taken it during the past 12 months. There were more male users (69 per cent) of ecstasy than female (31 per cent). Most users (79 per cent) were aged 19 or 20. This is a "fashion-related" type of drug and ecstasy consumption is currently declining slightly. In order to reduce ecstasy consumption, many cantons have drawn up guidelines intended for "ravers" and many prevention services distribute information material to drug users.

712. Concerned about the increase in problems relating to drug addiction, the Government decided, in 1991, to substantially strengthen its commitment in this respect. It is pursuing a drugs policy aimed at preventing the harmful effects of abuse on four fronts (four-pillar policy): prevention, therapy, reduction of risks and assistance with survival, enforcement and control.

713. Prevention in general is primarily the responsibility of the cantons and the communes, as required by the Federal Act concerning Narcotic Drugs and Psychotropic Substances of 3 October 1951.[496] A total of Sw F 30-35 million is spent annually on the prevention of addiction. In the face of the growing seriousness of drug problems, the Government adopted, in 1991, a series of measures which have enabled numerous projects to be undertaken in schools, institutions and youth organizations and for foreigners. These projects have been carried out in close cooperation with the cantons, communes and private organizations. In addition, since 1991, the Confederation has been conducting an awareness-raising campaign which is intended to strengthen the commitment of all persons to prevention on a daily basis. The various measures aimed at reducing drug-related problems have made it possible to continue support for certain projects in the long term and to undertake new projects. The Confederation is also conducting campaigns by means of posters, television announcements and advertisements aimed at increasing public awareness as a whole of the problems of dependency and drug addiction. Through accurate information, it will be possible to increase objectivity in tackling problems relating to drugs and dependency and to combat prejudice. Another aim is to encourage dialogue on these problems. The Confederation spends Sw F 2 million a year on this campaign.

714. As regards prevention for the benefit of young people, in the area of education, the Federal Office of Public Health (OFSP) and the Conference of Cantonal Directors of Education have set up the "Health in schools" programme.[497] The Confederation intends to support to

the full extent of its resources the efforts made by the school as a place of learning and establishment of behaviour favourable to health. An experimental programme of research on prevention was launched in 15 towns in 1999 in order to verify the effectiveness of intensive, early socio-educational action with respect to teenagers who were becoming problematic drug users. The main approaches used are the integration of action within the structures of everyday life (family, school, apprenticeship, sport and leisure) and recourse to various services (youth counselling, child psychiatry, social assistance, etc.). The research is conceived as a study which will, for the first time in Switzerland, elicit data concerning the behaviour patterns of young people over several years. With a view to promoting the training of parents, the Confederation and the Pro Juventute Foundation have updated a brochure entitled "My child too? Parents' questions about drugs and addiction" and have translated it into several languages. For the purposes of the prevention of drug addiction in youth organizations, the OFSP is cooperating closely with the Swiss Youth Activities Council and the Federal Sports College at Macolin. The most important projects are "Drugs or sport?" and "Voilà - prevention of drug addiction in youth organizations". Between 1993 and 1996, a total of 42,391 children and young people participated in activities supported by "Voilà". For the purposes of prevention in residential educational institutions, the OFSP is cooperating with the Swiss Association for Maladjusted Young People and the Swiss Professional Association for Specialized Education and Teaching in the context of a programme known as "Le fil rouge" (duration 1994-2001). Another project is to be undertaken jointly with the youth courts.

715. All the cantons practise systematic prevention against drugs, and this is included in school curricula and is often treated on a broader basis.[498] The focus is on the higher classes, where students often participate in multidisciplinary course projects, seminars and week-long courses entirely devoted to health matters. In this context, students have the possibility of cooperating regularly with the school medical services, the cantonal and regional addiction prevention services, private associations, etc. These technically competent services also play an important role in the further training of teachers. Subjects such as self-respect, self-discipline, communication, conflict resolution and similar topics constitute the essential features of prevention efforts undertaken by all the cantons at different educational levels. The cantonal expert commissions and addiction prevention services working in the field in the various cantons and regions do not limit their action to schools alone. They also deal, obviously, with other population groups such as parents, associations, leisure and district associations, young foreigners, young women, risk groups, etc. Projects, brochures and, in particular, documents are specially prepared for this purpose.

716. Lastly, in the context of the treatment of drug addicts, the Confederation favours the establishment of specialized programmes intended for addicted parents, including care for their children, and other programmes intended for young drug users. The therapies available for young drug addicts in Switzerland are essentially oriented towards the halting of drug abuse and the maintenance of social integration. Therapy is mostly organized through mobile specialized consultation in all regions and may or may not include the prescription of methadone for a short period. There are also a number of residential treatment institutions intended specifically for young addicts, and notably crisis treatment centres (short-term) and semi-residential programmes, which enable vocational training to be undertaken outside the institution.

717. As regards treatment comprising prescription of heroin, the following conditions must be met for the drug addict to be admitted to such treatment:

(a) The addict must have been dependent on heroin for at least two years;

(b) He or she must be aged at least 18;

(c) He or she must have made at least two unsuccessful attempts through another recognized therapy (mobile or residential) or his or her condition must not permit any other treatment; and

(d) He or she must present medical, psychological and/or social deficiencies attributable to drug use.

718. Exceptionally, when this is justified, notably in the case of a serious physical or mental illness excluding treatment based on other methods, a person who does not meet these conditions may be admitted to treatment comprising prescription of heroin.

719. In view of the conditions laid down, heroin prescription programmes are applied only for somewhat older persons. The recorded average age of patients is over 31.

720. Switzerland is a party to various international conventions applicable in the area of drugs: since 1968 it has been a party to the 1961 Single Convention on Narcotic Drugs.[499] In April 1996, it acceded to the Protocol of 24 March 1972[500] amending the 1961 Convention and to the Convention on Psychotropic Substances of 21 February 1971.[501]

721. Switzerland cooperates with the International Narcotics Control Board, the United Nations International Drug Control Programme and other United Nations agencies specializing in drug-related questions (WHO, UNESCO, etc.). In addition, Switzerland is a full member of the United Nations Commission on Narcotic Drugs and the Cooperation Group to Combat Drug Abuse and Illicit Trafficking in Drugs (Pompidou Group) of the Council of Europe.

722. Drug-related enforcement is based on the Narcotic Drugs Act. Under this Act, any person who unlawfully manufactures, sells, consumes or imports narcotic drugs or psychotropic substances is liable to prosecution. The main purposes of drug-related enforcement are to reduce the supply of drugs, reduce the number of new users, punish drug-related offences, and combat drug trafficking and the illegal financial operations and organized crime which are encouraged by such trafficking.

723. Thus, as regards the specific measures taken in Switzerland to combat drug-related crime, police action has hitherto been mainly geared to the repression of consumption. It has included the prevention of open drug scenes, raids and the denunciation of drug users. However, the cantons are increasingly orienting their efforts towards combating drug trafficking and economic crime specific to drugs (money laundering).[502] The profits made every year in Switzerland through drug trafficking have been estimated at Sw F 2.5 billion. At the federal level, the central

departments of the Federal Police Office (OFP) are active. In conjunction with several cantons, the OFP runs a databank on drug trafficking (DOSIS), which is used for criminal inquiries into this practice. There is also the computerized police search system known as RIPOL. In addition, a federal bill relating to secret investigation is under preparation.[503]

724. Drug use represents a type of behaviour which is harmful primarily for the user. Convictions for such behaviour are not usual under Swiss criminal legislation. Thus, suicide attempts are not punished. The prohibition and punishment of drug use, which was introduced in 1975 in the Narcotic Drugs Act, is based on the idea that it is the role of criminal law to strengthen fundamental socio-ethical values. Thus, the Narcotic Drugs Act provides for arrests or fines for illegal drug use. In minor cases, the competent authority may suspend the procedure or renounce any penalties. It may also issue a reprimand or an equivalent measure. In these cases, the so-called principle of appropriateness is applied, whereby prosecution of an offence may be dropped when important social interests are at stake, for example the social reintegration of a young drug addict. Judges often order various measures in addition to suspended terms of imprisonment, which the addict does not have to serve if he or she maintains good conduct for a trial period of at least two years. One measure frequently ordered is the obligation on the addict to follow a course of treatment. If the addict does not follow the treatment ordered by the judge or if he or she lapses back into drug-taking, the penalty then becomes inevitable in most cases. In cases involving serious offences or a previous criminal record, the judge may order a non-suspended prison sentence. He or she may, however, defer execution of the sentence and order an alternative measure in the form of mobile or residential treatment.

725. On the other hand, anyone engaging in drug trafficking is liable to imprisonment or a fine. In serious cases, the penalty will be rigorous imprisonment or ordinary imprisonment for at least one year; it may be combined with a fine of up to Sw F 1 million. A case is serious when the perpetrator:

> Knows or cannot be unaware that the offence involves a quantity of drugs which may endanger the health of numerous persons;
>
> Acts as a member of a gang organized in order to engage in unlawful trafficking in drugs;
>
> Engages in trafficking as a livelihood and thus realizes a substantial turnover or income.

726. In order to combat drug trafficking, the Drugs Section of the central Federal Police Office is in permanent contact with the police organizations of other countries, whether or not the countries are drug producers. Information is exchanged and, on the basis of international treaties providing for mutual judicial assistance, the various countries collaborate in action to combat drug-related crime.

727. It should emphasized that the overall efforts to combat the supply of drugs are also aimed at protecting children and young people.

728. The Narcotic Drugs Act is currently undergoing revision, the purpose of which is to decriminalize the ordinary consumption of drugs while protecting young people.

(b) Alcohol

729. Eight per cent of children aged 11 to 16 drink beer at least once a week, 2 per cent drink wine at least once a week, 3 per cent drink spirits and 4 per cent drink aperitifs. Roughly 3 per cent drink alcohol every day, and 4 per cent of this age group regularly get drunk.[504]

730. Alcohol consumption has grown mainly among girls, whereas among boys it has remained at practically the same level or even declined slightly.[505] The number of girls consuming alcohol every week has more than doubled over the past 12 years (from 8.5 per cent to 17.4 per cent). Although, generally speaking, schoolchildren do not drink more alcohol than previously, when they get drunk they consume larger quantities. Thus, the number of cases of drunkenness has steadily grown. In the two months preceding the inquiry, there was one 15-year-old schoolboy out of three who had already been drunk at least once. In the case of girls, this proportion was more than one out of five. The alcoholic drink preferred by boys is, as before, beer, which now comes only slightly ahead of the so-called "alcopops". Among girls, sweet alcopops have already overtaken beer. Less wine is drunk by girls and boys.

731. As regards legislation on alcohol, comprehensive restrictive legislation exists at the federal level in respect of spirits.[506] Demand is reduced essentially by the imposition of high taxes on all spirits. Alcoholic drinks obtained through fermentation, such as wine, beer and cider, account for over 80 per cent of total alcohol consumption. Federal regulations concerning all alcoholic drinks are in fact contained in the Ordinance on Foodstuffs (ODAI) and in the provisions of the Criminal Code which aim at the protection of young people, or in the criminal measures provided for by road traffic legislation concerning drunken driving.

732. The advertising of alcoholic drinks is limited; no advertising is allowed on television or radio or at events intended for children or teenagers.[507] In addition, under article 24 of the ODAI,[508] any advertising of alcoholic drinks specially addressed to young people under the age of 18 and intended to encourage them to consume alcohol is forbidden. The ODAI determines what kind of advertising is forbidden and where. In addition, no distilled drinks may be sold to young people under the age of 18.[509] In the case of alcoholic drinks obtained through fermentation, the ban on sales is established by cantonal legislation and the age limit is generally set at 16.[510]

733. In order to reinforce measures to combat alcoholism, the OFSP and the Federal Authority on Alcohol (RFA), in conjunction with the ISPA, launched at the beginning of 1999 the "Ça débouche sur quoi?" programme for the prevention of alcohol-related problems. This information programme on risk-free alcohol consumption is initially limited to the period 1999-2002. As far as possible, activities will be coordinated with those of other private organizations and the cantons. The programme will include an information campaign, brochures and teaching material, together with individual consultations for persons at risk given by health specialists.

734. Recently problems have arisen in relation to the new fashionable drinks for young people: during the past three years or so, "soft" drinks with an alcohol content of 4 to 5 per cent intended for young people have become fashionable. Initially, these drinks clearly contained distilled alcohol and, subsequently, fermented alcohol. The federal authorities have found themselves obliged to act, and the following measures have been taken:

These mixed drinks have been made subject to the Lalc in two stages. The "premix" drinks, which the RFA defines as drinks containing spirits, have been subject to the Lalc since February 1997. The RFA decided to make "alcopops" subject to the Lalc as from 1 December 1997. It defines alcopops as being in general a mixture of lemonade and ethyl alcohol, without distinguishing the method of production. These drinks have therefore become less accessible to young people. In addition to the ban on sales to persons under 18, which applies all over Switzerland, these drinks are more expensive and are now subject to the same advertising restrictions as spirits;

Conferences with the cantonal executing authorities are organized in order to ensure more effective compliance with the provisions concerning the protection of young people in matters relating to alcohol. For a long time now, studies have shown that compliance with the provisions intended to protect young people against alcohol abuse has been sketchy;

Training of retailers and restaurant-owners is organized in order that these people may teach their staff about the problem of alcohol consumption by young people;

Efforts are currently being made to incorporate in the ODAI the obligation to include on the alcopop label the alcohol content and warnings about the ban on the sale of alcohol to persons under 16, and the obligation to separate alcopops from soft drinks.

(c) Tobacco

735. Thirty-three per cent of the population in Switzerland is addicted to smoking. In the 1997 Swiss survey on health (made public end-November 1998) a large increase was observed in the number of young people smoking; whereas in 1992, at the time of the previous health survey, 23 per cent of young people between the ages of 15 and 19 were smoking, by 1997 the figure had risen to 40 per cent. It was also noted that young girls no longer differed from boys in this, as they did in 1992: the proportion of girls in that age range who smoked had increased from 18 to 39 per cent and that of boys from 29 to 41 per cent.

736. There are several reasons for this considerable rise in the consumption of tobacco among young people:

People are in general more open to the consumption of psychoactive substances (cannabis or cocaine, for example);

Young people are influenced by the messages and values employed in tobacco advertising;

Society has become more permissive;

Smoking helps young people to find their identity and strengthens their sense of belonging to a group;

The fear of unemployment and a general uncertainty about the future may lead young people to smoke to try to look more sure of themselves.

737. Preventive measures thus need to be reinforced. As part of the "Swiss network of health-promoting schools", for the year 1999 about a hundred schools have committed themselves to becoming tobacco-free zones. Roughly 30,000 schoolchildren are involved in this project.

738. There is no legislation defining the minimum age for access to tobacco products. Tobacco advertising is prohibited on television and on radio.[511] Tobacco advertising is also banned when it is specifically directed at young people (that is, those under 18), especially in places mainly frequented by young people, in magazines chiefly aimed at them, on free gifts that are offered them (T-shirts, caps, balls etc.), or at cultural or sports events principally attended by them. Handing out samples to young people under 18 is also forbidden. The implementation of this law raises several problems, particularly the difficulty of proving that the advertising is mainly directed at those under 18.

739. To tackle the issue of tobacco addiction and as a preventive measure, on 16 August 1995 the Federal Council adopted a comprehensive programme for dealing with all the health problems linked to tobacco consumption. The programme is based on recommendations made by WHO, the European Union and the Federal Commission on tobacco-related problems, and is described as "comprehensive" because it attempts action at one and the same time in several areas. It has three priorities:

Reinforcing primary prevention, in order particularly to reverse the trend towards increased tobacco consumption among young people between 11 and 18 years of age;

Developing protection for non-smokers;

Helping people to lose the habit of smoking.

740. Prevention aimed at young people takes several forms:

General information (in schools or sports centres, for example);

Sponsorship: getting an attractive health message across by means of positive promotional activities (no bans);

Helping young people specifically to lose their smoking habit.

741. One concrete measure is the programme "New pleasure - tobacco free" that was launched nationwide in 1992. Geared to young people between 14 and 18 years of age, the campaign takes a resolutely positive approach that emphasizes tolerance. It is in the spotlight at youth-oriented sports events (mountain-biking, skateboarding, street parades, discos etc.). In 1997 two thirds of the target population knew of the campaign and a majority found it persuasive.

742. Finally, it should be noted that in May 1998 the Federal Department of Home Affairs appointed a new Federal Commission to prevent tobacco addiction, composed solely of representatives in the area of prevention. Its role is to advise the Department on all issues related to tobacco addiction and strategies for its prevention.

(d) Other forms of dependency

743. A study of pharmaceutical drug dependency was carried out using 16,554 pupils at Swiss schools, and the results in 1994 for children from 11 to 16 were as follows: over the previous 30 days, 44 per cent of boys and 30.2 per cent of girls had taken no medicines, 30 per cent and 34.6 per cent respectively had taken medicine once and 25.6 per cent and 35.2 per cent had taken medicine several times. During that period more than 11 per cent had taken painkillers several times and nearly 4 per cent had taken sleeping pills. No specific measures were adopted, since the pharmaceutical drug market is extensively regulated, medicines being, in principle, only available on prescription and in any case obtainable only in pharmacies.

3. Sexual exploitation and sexual abuse (art. 34)

744. On the subject of offences against sexual integrity and their prevention, the reader is referred to the commentary relating to article 19.

(a) Criminal law provisions

745. The specific provisions governing the protection of children and minors (CP, arts. 187 and 188) and the articles concerning the violation of sexual freedom and sexual honour (CP, arts. 189-191) apply, whether the offender is a member of the family or someone outside it.[512]

746. In accordance with article 195 of the Criminal Code - inducement to prostitution - anyone who drives a minor into prostitution is liable to punishment. Under article 196 - traffic in persons - anyone who, to satisfy others' desires, traffics in human beings is equally liable.

747. Child pornography is considered "hard-core" pornography; as such it is prohibited by the Criminal Code. Article 197, paragraph 3, of the Code provides for an absolute prohibition of hard-core pornography, including acts of a sexual nature with children. Thus a punishment of imprisonment or a fine is (art. 197, para. 3) imposed on anyone who makes, imports, stores, circulates, promotes, exhibits, offers, shows, provides access to or makes available pornographic objects or representations which have as their content acts of a sexual nature with children,

animals or human excrement or include acts of violence. A draft revision is under consideration to make it possible to punish the acquisition and simple possession of hard-core pornography.

748. Finally, the revised draft of the general part of the Criminal Code contains a new article 5 - already examined and slightly amended by the upper chamber of Parliament (the Senate) - which would create the legal basis for the prosecution in Switzerland of persons guilty of serious sexual offences committed abroad against minors, regardless of the foreign law. In relation to such acts the draft eliminates two requirements: that of dual criminality, on the one hand, and that of deferring to the possibly more favourable law, applicable at the place where the offence was committed, on the other. The offender would, moreover, be prosecuted without regard to his or her nationality, so long as he or she was in Switzerland and was not extradited.

749. It should however be stressed that it is when the evidence must be produced that the chief obstacles arise in the prosecution of offences committed abroad; this is particularly true when the offences in question are not punishable in the country where they have been committed, because the State concerned does not then feel in any way obliged to offer judicial cooperation.

750. Mention should be made here of the fact that Switzerland participates actively, within the Council of Europe, in the work of the Committee of Experts on crime on the Internet. The Committee's mandate is to consider, in particular, activities that contravene the laws on the protection of minors and to draft a binding legal instrument in the light of the Recommendation on computer-related crime[513] and the Recommendation[514] concerning problems of criminal procedural law connected with information technology.[515]

(b) Statistics

751. In 1996 there were eight convictions in Switzerland for "inducement to prostitution" (CP, art. 195).

752. For trafficking in persons (not limited to children) there were four convictions in 1996, whereas previously no crime of that nature had been recorded for many years.

753. From 1993 to 1996 convictions for sexual acts with a pornographic connection involving children (CP, art. 187, in relation to CP, art. 197; not only cases of exploitation of children) practically doubled, from 17 to 30. From 1993 the first full year after the entry into force of the new provisions on sex-related crime, to 1996 the number of convictions for pornography (CP, art. 197) rose from 60 to 272.

(c) Sources of child prostitution and other forms of exploitation of children

754. Child prostitution and other forms of exploitation of children often seem to be linked to drug addiction.[516] It is already, in part, in schools that information is provided on sexual abuse, maltreatment of children and drug addiction and that the prevention of those crimes takes place. The work done by the Federal Office of Public Health and, in particular, its campaigns to prevent drug addiction are of note here.

755. Poverty is also often cited as a cause of child prostitution and the exploitation of children in general. This does not usually seem to be the case in Switzerland[517] in view of its social insurance system, its public assistance and its family policy measures.[518]

(d) Prevention and initiatives

756. Switzerland is unremitting in its active concern (particularly in the United Nations and the Council of Europe) with the serious problem of sex tourism. The Federal Bureau for Equality between Women and Men within the Federal Department of Home Affairs has the task of making those concerned aware of the problem. For some years now tourist agency advertising has not carried the kind of incitements or even simple allusions likely to attract those tempted by sex tourism; the same is true of tourist guides sold in bookshops.

757. In July 1998 the Federal Police Office group of experts on traffic in persons issued a first report entitled "Paedophilia in Switzerland".

758. The association against the sexual exploitation of children for commercial purposes Arge Kipro is the Swiss branch of ECPAT. It combats sex tourism, particularly when Swiss nationals abuse children abroad. It publishes a regular information bulletin of news on this subject and works to provide information nationally and internationally. Arge Kipro was set up by several private associations at the end of the 1991/92 Swiss campaign against child prostitution in the third world and sex tourism. It receives a subsidy from the Confederation.

759. In 1998 some 80 Swiss and foreign experts attended a symposium held on the initiative of Arge Kipro and the Swiss Committee for UNICEF to debate Swiss extraterritorial legislation on the sexual exploitation of children for commercial purposes, the legal principles governing the issue and how to reflect them in the laws. Cooperation between the authorities and NGOs and new strategies to be adopted in the fight against this problem were also on the agenda.

760. The Swiss Olympic Association and the Macolin Federal Sports College deal with issues of sexual exploitation and violence in sport. They examine varied forms of training and intervention as well as the creation of consultation services for those affected. In 1997 the Swiss Association for the Protection of Children (ASPE), which is supported by the central unit for family matters in the Federal Office for Social Insurance (OFAS), launched a project intended to help to prevent the ill-treatment and abuse suffered by children in sports associations.

761. The private organizations mentioned below deal with the issues stated.

762. The International Committee for Child Dignity is heavily involved, in Switzerland and abroad, in combating the different forms of sexual exploitation of children for commercial purposes.

763. The International Social Service, which has ties with 120 countries, has among its aims the protection of children and families split between Switzerland and abroad. It is, in particular, active in cases of international abduction of children, protection measures for maltreated

children, the exercise of parental rights, and international adoptions. The Service tries to emphasize mediation and dialogue among the persons involved. It receives a subsidy from the Confederation.

764. The Defence for Children International Movement also works in this area, as does the Information Centre for Women of the Third World, to which the Confederation grants a subsidy.

(e) Study on the sexual exploitation of children for commercial purposes in Switzerland

765. In March 1999 the results of initial research on the sexual exploitation of children for commercial purposes in Switzerland (largely funded by the Federal Office for Social Insurance and the Federal Office of Public Health) were published. The study, by the private organization Arge Kipro, concerns 60 individual cases and was carried out mainly in interviews. It is qualitative research; no indication is given of the number of cases in Switzerland, since the statistical data are lacking. According to the definition used in the study, sexual exploitation for commercial purposes occurs when the exploiters obtain a profit going beyond the direct, personal action of the child, when the child's services are paid for, when a material recompense is promised him or her or when the children themselves obtain material profit from their services.

766. The study demonstrates that the children and young people concerned are confronted with very complex situations. The forms of sexual exploitation for commercial purposes range from exploitation within the family or the immediate social environment to occasional prostitution to obtain drugs, street prostitution or child pornography and to detaining young people in brothels, which is similar to slavery. According to the study, girls and boys are affected in equal numbers.

767. The research shows that in Switzerland the sexual exploitation of children for commercial purposes takes place mainly in private and in the immediate social environment. There is very little information on traffic in children, which is part of the paedo-sexual scene. Street prostitution involving young girls does not reveal any clearly organized structure.

768. For purposes of prevention, basic and ongoing training needs to be organized for parents and educators. Schools should inculcate notions of self-esteem and self-confidence, promote the development of the personality and strengthen the sense of right and justice among children. With regard to intervention, the study advocates reception centre services geared to the specific needs of the children concerned.

4. Abduction or sale of or traffic in children (art. 35)

769. Reference should be made here to the considerations expressed in the observations relating to articles 11 and 21 of the Convention.

770. Article 196 of the Criminal Code makes traffic in persons a criminal offence. This provision takes account of the conventions ratified by Switzerland on the matter.[519] It states that anyone who, to satisfy the desires of others, traffics in persons shall be punished by rigorous or ordinary imprisonment of at least six months. The acts preparatory to the trafficking carry a

maximum penalty of five years' rigorous imprisonment or ordinary imprisonment (art. 196, para. 2). Article 183 of the Criminal Code (kidnapping and abduction) also applies to cases of traffic in persons and provides for a penalty of five years' rigorous imprisonment.

771. To date only a few rare cases of trading in children for purposes of sexual exploitation have been known in Switzerland. In May 2000 the Government decided to set up an interdepartmental working group on traffic in persons.

772. Switzerland is increasingly active on the international scene in regard to the sale and abduction of and traffic in persons. Multilaterally it is working within the International Organization for Migration (IOM) and the Organization for Security and Cooperation in Europe. Within the United Nations it took an active part in the work of drafting the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, which it signed in September 2000. In general, it also supports the mandate of the Commission on Human Rights Special Rapporteur on the sale of children, child prostitution and child pornography by co-sponsoring Commission resolutions concerning her activities and providing her with information relevant to her mandate.

5. Other forms of exploitation (art. 36)

773. Reference is made to the observations concerning articles 32 to 35 of the Convention.

D. Children belonging to a minority (art. 30)

774. Switzerland, which has within its territory communities differing from one another in language, culture or religion, often appears a model of coexistence among distinct populations. Indeed, thanks to its federal system, it does offer its national minorities a political and administrative autonomy that enables them to develop and preserve their respective languages, religions and cultures. At the same time the federal system ensures their participation and representation within national institutions. Switzerland is convinced that protecting persons belonging to national minorities helps to ensure their peaceful coexistence and makes democracy work.

775. For these reasons in Switzerland the protection of persons belonging to a minority is enshrined in the Federal Constitution, both in its preamble, which speaks of the diversity of the Swiss people and the consequent duty to respect one another, and in the provisions on languages, cultures and religions, as well as in those on institutions. At the international level, Switzerland is a party to the Framework Convention of the Council of Europe for the Protection of National Minorities and the European Charter for Regional or Minority Languages. It is involved in a number of activities internationally to develop the protection of minorities and in particular it participates actively in the United Nations Working Groups on Minorities and on Indigenous Populations.

776. According to surveys carried out by the OFS in 1990, children in Switzerland spoke the following national languages: 64.1 per cent, German; 20.5 per cent, French; 6.3 per cent, Italian; and 0.5 per cent, Romansh. In 1990, 47.2 per cent of children were Roman Catholics

and 37.9 per cent were Protestants.[520] Out of the 1,399,011 children counted in the country in 1990, 1,132,942 were of Swiss nationality. In other words, about 20 per cent of the children living in Switzerland were of foreign nationality.[521]

1. Status of languages in Switzerland

777. Recognition of the multilingual character of Switzerland and the maintenance of linguistic communities are a component of our national identity and also a constituent element of our theory of the State and of the political culture of Switzerland.

778. The official languages of the Confederation are German, French and Italian, as well as Romansh for the Confederation in its dealings with Romansh citizens (FC, art. 70).[522]

779. The cantons decide on their official languages. In order to preserve harmony among the linguistic communities they must take care to maintain the traditional territorial distribution of the languages and take linguistic minorities into consideration.[523] The great majority of the cantons have only one official language. Four cantons have, however, chosen to have more than one. Three - Bern, Fribourg and Valais - are bilingual, whereas the canton of Graübunden is trilingual.

780. In agreement with the cantons, the Confederation assumes other important tasks concerning the promotion of the national languages, in particular encouraging understanding and interaction among the national linguistic communities.[524] Drafts are being prepared along these lines, for example the draft law on the use of official languages by the authorities of the Confederation and its administrative bodies both among themselves and in their dealings with the public and the cantonal authorities, and the draft law on the promotion of understanding and interaction among the linguistic communities.[525]

781. The Confederation is furthermore empowered to support measures adopted by the cantons of Graübunden and Ticino in favour of the minority languages Romansh and Italian. This has been done by means of measures contained in the Federal Act concerning Financial Assistance to Safeguard and Promote the Romansh and Italian Languages and Cultures.[526]

782. In relations among individuals freedom of language (FC, art. 18) guarantees the use of the language of one's choice, including dialects, where either national or foreign languages are concerned. In relations between individuals and public authorities, it is the official language that comes into play.

783. As a result of the way languages are regulated in Switzerland, a child may, in private, express him or herself in the language of his or her group. In dealings with the authorities, the language used will be the official language of the canton. Where the canton has more than one official language, the child may choose for his or her dealings with the authorities the official language with which he or she is more familiar.

784. In the school context, it does not seem that the Federal Court has concluded from the principle of freedom of language that a child has a right to be taught in a language other than the official language of his or her place of residence.[527] On the other hand, the Federal Court did

rule that a child cannot be required to attend a school where the teaching is in a language other than the language he or she uses if another commune is prepared to admit the child into a school that uses his or her language.[528]

785. It should be noted furthermore that the Swiss radio and television broadcasting corporation (SSR) offers its own programmes to the four linguistic communities. In each of the three major linguistic regions (German-speaking, French-speaking and Italian-speaking Switzerland), three different radio programmes are on offer, a total of nine altogether. The first programme in each language can be picked up not merely in the linguistic region immediately concerned but also throughout Switzerland. The Romansh language radio channel broadcasts, on ultra-high frequency, only in the canton of Graubünden, where the Romansh population traditionally resides, but it can also be heard in different urban areas outside Graubünden over cable networks. The major linguistic communities have an entire television channel each. These three channels have to take the interests of the Romansh regions into account also, by transmitting programmes in that language.

786. Article 3 of the licence of 18 November 1992 granted by the Federal Council to the SSR states that radio and television programmes must encourage mutual understanding, cohesion and interaction among the country's regions, linguistic communities and cultures, particularly bearing in mind the presence of foreigners in Switzerland.

2. Cultural diversity in Switzerland

787. It may be said in general that the Swiss political system considers the presence within the country of groups with different cultures a source of enrichment. Indeed, the entire Swiss system, from the point of view of both its organizational and its social aspects, is so arranged that the country's different cultural communities - which by and large coincide with its linguistic communities - can see themselves as part of the Swiss State.

788. In this regard it should be added that respect for human dignity and for privacy, the prohibition of any discrimination, and freedom of expression, of religion and of language, all guarantee the freedom the children and young members of minority groups need to practise their culture. Further, the Confederation and the cantons are committed, within the limits of their constitutional competence and available resources, to ensuring that children and young people are assisted in their social, cultural and political integration (FC, art. 41). Lastly, whenever the Confederation encourages cultural activities of interest nationwide, it must take the diversity of the country into consideration.

3. Freedom of religion

789. All children belonging to a minority enjoy freedom of religion. As was made clear in the comments relating to article 14 of the Convention, the guarantees inherent in freedom of religion allow all children to profess and practise their religion without hindrance, whether it is considered a majority or a minority religion.

4. Travellers

790. Travellers are a cultural minority in Switzerland; there is no detailed accounting of the nomadic population living in the country. Estimates suggest that they number about 25,000 persons, of whom only 4,000 to 5,000 have not become sedentary. The great majority of nomads in Switzerland consider themselves of "yéniche" stock.

791. The mutual aid association "Children of the Road" (child travellers), founded in 1926 by the Pro Juventute Foundation, was dissolved in 1972. In the sincere belief that it was acting to protect the children of the travellers minority, that association took 619 of those children from their families and forced them to become sedentary. The children were placed, sometimes in foster families, sometimes in homes or orphanages, sometimes even in psychiatric clinics. As the entity mainly responsible for that action, Pro Juventute officially apologized to the community of travellers. At the request of the Government, in 1988 Parliament voted funds of Sw F 3.5 million and, in a second phase, Sw F 7.5 million to compensate some 1,900 victims of that policy.[529] A historical study commissioned by the Federal Department of Information and published in 1998 shed light on the discriminatory acts of the past, noting in particular the respective roles and responsibilities of Pro Juventute and the Confederation.[530]

792. On 1 May 1997 the Confederation established the foundation "Assuring the future for the travellers of Switzerland". Its aim is to facilitate the search for solutions to the main problems facing the travellers in Switzerland, namely the question of camping grounds, of trading licences and of the children's schooling. The foundation serves, in the first instance, as a forum in which the representatives of the travellers, the communes, the cantons and the Confederation can seek solutions together. It also plays the role of intermediary in efforts to resolve specific cases. Lastly, it has a mandate to make the public aware of the travellers' circumstances by means of various projects.

793. It should be noted, in addition, that the Swiss legal system was chiefly created to serve the views and interests of the sedentary population. As a result, the laws in force may militate against the maintenance of the travellers' cultural identity. Much attention is therefore being paid to the question. In that respect, the Federal Commission against Racism (CFR) recommends support for those teachers who are ready to provide correspondence courses during the months when families are on the road. It also recommends a flexible application of the general ban on child labour in the case of travellers' children. Not that the ban, which is motivated by a desire to protect youngsters from exploitation, should be lifted, but that these children should be allowed to accompany their parents and acquire the knowledge they will need in the future for the work travellers traditionally do.

794. Lastly, with regard to schooling for travellers' children, the cantons concerned deal with the matter in a very pragmatic way by admitting the children to school even for short periods. In wintertime the children go to the local school at the place where they have gathered and can also attend make-up classes there. During their travelling time, the teaching staff provide them with textbooks and appropriate homework and are ready to answer any questions about the work or to maintain regular contacts with the travellers.

5. Foreign-language-speaking or multilingual children[531]

795. On average some 20 per cent of schoolchildren speak a foreign language and do not therefore have their lessons in their mother tongue. The Federal Commission on Foreigners and the CDIP held a national conference in June 1998 concerning the extra courses on country-of-origin language and culture taught in Swiss schools.[532]

796. That meeting confirmed the fact that for multilingual children their experience of their first language as the language of the family is of great importance in their quest for identity between the two cultures and for a possible return to their country of origin. A good knowledge of their first language has a positive influence on their acquisition of a Swiss national language as their second language.

797. Nearly all the cantons, embassies, consulates or national groups offer courses on their language and culture of origin to the children of their nationals. Often the cantons or communes make school premises available to them free of charge. In certain schools the first language of foreign-language-speaking children is taught as part of the school programme.[533]

798. Extracurricular activities are equally important for the development of young foreign-language-speaking children. Social gatherings of young people play an important role in this regard by providing a social infrastructure and places where youngsters of the same age and culture can get together. In connection with the assistance given to foreign children and young people, it is important that staff of the children's original cultures be recruited to act, among other things, as intermediaries to ensure integration and understanding between the different cultures. Acquiring a knowledge of many cultures - both in school and out - strengthens tolerance and an understanding of other ways of life. Intercultural understanding is also enhanced by public discussion of the circumstances of foreign families and, especially, the future prospects of young foreigners.

799. The prevention of racism and intercultural education play a very important role here. Reference is made to the observations relating to article 2 of the Convention.

IX. CONCLUSION

800. Preparation of this report has afforded an opportunity to conduct a comprehensive review of the social and legal situation of children in Switzerland and to describe the achievements of policy concerning them against the background formed by the Convention.

801. This review has drawn attention to the areas in which the protection of the child needs to be strengthened. While the situation of children in Switzerland is generally very good, it is nonetheless true that implementation of the Convention in some sectors, such as provision of day care and prevention of problems relating to drugs, sexual violence and suicide, needs to be improved.

802. As a framework for action, this report has given impetus to national and cantonal policies on children and young people. It is the intention of the Government to encourage these initiatives, in particular in the context of preparations for the World Summit for Children.

803. Progress in these areas will thus give practical expression to the continued commitment by Switzerland to respect and ensure respect for the rights enshrined in the Covenant.

Notes

[1] RS 0.107.

[2] The statistical material is provided by the Federal Office for Statistics (OFS).

[3] See statistical table No. 1 annexed.

[4] See Statistical table No. 2 annexed (with detailed data on other languages and religions).

[5] Switzerland uses both the term "human rights" and "rights of the individual", the words "human" or "individual" designating any human being, regardless of sex. This also applies to other terms such as "citizens", "refugees", etc.

[6] See Federal Council report of 29 November 1993 on Switzerland's foreign policy in the 1990s (FF 1994 I 150, ch. 412 (p. 176)).

[7] FF 1994 V 76 et seq.

[8] See also the Federal Council's position of 13 March 2000 on the Berberat motion, No. 99.3627, of 22 December 1999.

[9] See commentaries relating to articles 5, 7, 10, 37 and 40 of the Convention.

[10] For further details of the new criminal law on minors, see the commentary relating to article 40 of the Convention below.

[11] Message concerning the amendment of the Swiss Criminal Code and the Military Criminal Code, and also a federal act governing the criminal status of minors of 21 September 1998 (FF 1999 1787 et seq.).

[12] In cooperation with the DFI, the Swiss Committee for UNICEF organized, on 5 February 1999, a symposium on the subject of mediation work for children.

[13] See HRI/CORE/1/Add.29/Rev.1, para. 79. See also ATF 112 Ib 184, 120 Ia 1 and 124 IV 23.

[14] On the initiative of Kinderlobby Schweiz, 20 November has been celebrated as Children's Day in Switzerland since 1993, commemorating 20 November 1959 (when the United Nations General Assembly adopted a declaration of intent embodying 10 important rights of the child) and 20 November 1989 (date of adoption of the Convention by the General Assembly).

[15] Article 2 of the Ordinance of 3 June 1996 on extraparliamentary commissions, executive bodies and representatives of the Confederation (RS 172.31).

[16] Journal suisse des enseignantes et enseignants (SLZ), 1999, book 1, pp. 27-33.

[17] Notably the cantons of Obwalden, Geneva, Zürich, Fribourg and Ticino. By way of example, mention may be made of the following: Geneva has prepared didactic material geared to the primary level, and several chapters of the higher-level civic education textbook "Education citoyenne" are devoted to the Convention. In addition, the text of the Convention is distributed to all higher-level pupils. Fribourg also presents the Convention in its civic education textbook. Ticino educates its schoolchildren by means of brochures and an itinerant exhibition.

[18] Notably the cantons of Zug, Thurgau, Schaffhausen, Appenzell-Ausserrhoden, St. Gallen, Basel-Land, Uri, Basel-Stadt, Valais and Jura.

[19] St. Gallen, Graübunden, Zürich, Ticino, Jura and Solothurn have expressly taken it as a subject in their training programmes. Several cantons report specific initiatives by associations, schools or institutions on the subject of the Convention. In Ticino, the themes of the Convention have been included in the parent training and parents' advice service programme. In Solothurn, all the authorities and institutions working in the sphere of child protection have had their attention drawn to the specific requirements of the Convention.

[20] Internet: www.younet.ch.

[21] On the model for Switzerland's initial report relating to the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination of 1965.

[22] Joint United Nations Programme on HIV/AIDS.

[23] United Nations population fund.

[24] ATF 114 Ia 350.

[25] RS 822.11.

[26] See. the commentary relating to article 32 of the Convention.

[27] LTr, art. 29 (1).

[28] LTr, art. 29 (3).

[29] FF 1996 III, 197.

[30] LPMA, art. 27 (2).

[31] RS 680.

[32] See commentary relating to article 33 of the Convention.

[33] See commentary relating to article 28 of the Convention.

[34] RS 311.0.

[35] FF 1999 1787.

[36] See commentary relating to article 40 of the Convention.

[37] J.P. Müller, "Grundrechte in der Schweiz; Im Rahmen der Bundesverfassung von 1999, der UNO-Pakte und der EMRK", third edition, 1999, p. 396.

[38] J.P. Müller, op. cit., p. 396.

[39] See among others ATF 124 I 289 E. 3b, p. 292.

[40] ATF 121 II 198 E. 4a, pp. 204.

[41] ATF 122 I 343 E. 4, pp. 349 et seq.

[42] ATF 123 IV 202.

[43] RS 312.5.

[44] RS 151. Entered into force on 1 July 1996.

[45] Various aspects of the integration of foreign children in the Swiss school system are discussed under article 28 of the Convention.

[46] Other examples of recent publications are "Diskriminierungsverbot und Familiennachzug, 1998; Antisemitismus in der Schweiz, 1998; und Getrennte Klassen? 1999".

[47] Adopted at the summit meeting of the Heads of State and Government at Vienna in 1993.

[48] Of 6 June 1991.

[49] Cf. Federal Office of Justice, Report of an interdepartmental group on questions under criminal law of the right to data and copyright protection raised by the Internet, Bern, May 1996.

[50] For example the notice of 14 February 2000 of the Federal Police and the recommendations of DFAE.

[51] See the commentaries relating to articles 9, 12 and 18 of the Convention.

[52] Cf. Swiss statistics on tutorship for 1997 concerning old and new measures for the protection of children (Statistical table No. 5 annexed).

[53] ATF 117 II 353.

[54] See commentaries relating to article 37 of the Convention.

[55] A project based on a parliamentary initiative by Haering Binder concerning authorized deadlines is at present being debated in Parliament. This project proposes that termination of pregnancy during the first 14 weeks after the beginning of the last period should not be punished.

[56] RS 312.5.

[57] ATF 121 I 367.

[58] See commentaries relating to articles 26 and 27.

[59] Cf. the Federal Act concerning Assistance to Swiss Nationals Abroad (RS 852.1) and an implementing order (RS 852.1) establishing the principle of and procedures for assisting such persons when in need.

[60] RS 142.311 and 142.312.

[61] RS 142.20.

[62] RS 142.281.

[63] See commentary relating to article 28 of the Convention.

[64] See commentaries relating to article 3 of the Convention concerning the various measures that can be taken by the authorities.

[65] See commentary relating to article 32 of the Convention.

[66] See commentary relating to articles 19 and 34 of the Convention.

[67] CC, art. 48 and OEC, art. 74 (1).

[68] Articles 59 (1) and 74 (2) of the Ordinance of 1 June 1953 on Civil Status (OEC), RS 211.112.1.

[69] RS 211.112.1.

[70] OEC, art 80.

[71] OEC, art 83 (1) a contrario.

[72] CC, art. 301 (2).

[73] As for example in Bern, Lucerne and Fribourg.

[74] Jura for example.

[75] For example in the cantons of Bern, Basel-Stadt, Geneva, Fribourg and Lucerne.

[76] ATF 120 Ia 369.

[77] The cantons of Appenzell-Ausserrhoden and Uri, for example.

[78] The canton of Schwyz, for example, fixes the age limit at 24 months for girls and 30 months for boys.

[79] Zug and Graubünden, for example.

[80] Basel-Stadt.

[81] Such as dolls in Appenzell-Ausserrhoden, for example.

[82] CC, art. 133 (2).

[83] CC, art. 144 (1).

[84] CC, art. 134 (1).

[85] CC, art. 146 (2).

[86] CC, art. 146 (3).

[87] CC, art. 147 (2).

[88] CC, art. 147 (3)

[89] In the cantons of St. Gallen, Basel-Land and Schwyz, for example. In the canton of Basel-Stadt children of under 14 years of age are heard if necessary, while it is mandatory to hear those of 14 years and over.

[90] In the canton of Bern, for example, this is done every six months.

[91] CC, art. 256 (1) ch. 2; CC, art. 259 (2), ch. 2; and CC, art. 260a (1).

[92] CC, art. 279 (1).

[93] CC, art. 30 (1).

[94] CC, art. 392 (2).

[95] CC, art. 265 (2). For example, Basel-Land fixes the age limit at about 5 or 6 years, Schwyz at about 10 years, whereas the cantons of Ticino and Vaud require that the child to be adopted should provide written confirmation of the request.

[96] See commentary relating to article 19 of the Convention.

[97] OEC, art. 59.

[98] OEC, art. 61.

[99] OEC, art. 59 (2).

[100] CC, art. 270, and OEC, arts. 67 and 69.

[101] CC, art. 69 (2 bis).

[102] CC, art. 261 (1).

[103] CC, art. 309 (1). See statistical table No. 5, annexed.

[104] FF 1998 4992.

[105] CC, art. 297 (1).

[106] CC, art. 298 (1). The situation of children whose parents are divorced is considered in the commentary relating to article 18 of the Convention.

[107] See, in this connection, the position taken by the Federal Council on 13 March 2000 with regard to the Berberat parliamentary motion, N 99.3627, of 22 December 1999.

[108] OEC, art. 27.

[109] OEC, art. 67.

[110] OEC, art. 114.

[111] OEC, art. 18.

[112] Except in cases of malicious complaint.

[113] ATF 96 I 586, 592.

[114] ATF 108 Ia 277.

[115] See commentary relating to article 12 of the Convention.

[116] See Federal Council message of 20 November 1996 on the reform of the Federal Constitution, FF 1997 I 1s., art. 14, p. 160.

[117] See Müller, in Commentary on the Federal Constitution, freedom of expression, No. 48 et seq.

[118] These restrictions are codified in a general provision of the Federal Constitution at the end of the list of fundamental rights (art. 36).

[119] See Convention, art. 15.

[120] The following are prohibited: calumny (art. 303); violation of trade, private, company, professional or military secrets (arts. 162, 179, 179 quater, 320, 321 and 329); improper use of a telecommunications system (art. 179 septies); public incitement to crime or violence (art. 259); racial, ethnic or religious discrimination (art. 261 bis); disturbing the peace of the dead (art. 262); violation of Swiss emblems (art. 270); depiction of violence (art. 135); violation of freedom of belief and worship (art. 261); provoking and inciting the breach of military duties (art. 276); production of subversive foreign propaganda (art. 275 bis); publicly insulting a foreign State or inter-State organization (arts. 296 and 297). See also the provisions on the protection of a person's honour (art. 173 et seq.) and certain sexual offences (art. 187 et seq.).

[121] ATF of 24 May 1978, ZBl 1978, p. 510.

[122] CP, art. 261.

[123] RS 446.1. See also the Ordinance concerning the Encouragement of Extra-curricular Youth Activities of 10 December 1990 (RS 446.11).

[124] [No text.]

[125] RS 784.401.

[126] Entered into force for Switzerland on 1 May 1993. RS 0.784.405. The 1998 amendments to the Convention enter into force in Switzerland on 1 October 2000.

[127] This provision also applies to teleshopping. See Council of Europe Opinion No. 8 (1997) on advertising aimed at children and advertising for alcoholic drinks, which comments on the provision in article 11 (3) of the Convention. See also, for the restrictions on alcohol and tobacco advertising, the commentary below relating to article 33 of the Convention.

[128] See the various penalties provided for in article 197 of the Criminal Code.

[129] ATF 104 Ia 84.

[130] Direct horizontal effect, ATF 4 434ss.

[131] Pursuant to article 62 of the Constitution, cantons are responsible for providing primary education in State schools.

[132] ATF 116 Ia 252, 260, preambular paragraph 6.

[133] See Borghi, in Commentary on the Federal Constitution, article 27, No. 68 et seq.

[134] ATF 123 I 296.

[135] ATF 116 Ia 252.

[136] See commentary relating to article 30 of the Convention.

[137] ATF 114 Ia 134.

[138] In Geneva, for example.

[139] St. Gallen, Schwyz and Bern, for example.

[140] ATF 120 Ib 4.

[141] ATF 120 Ia 376.

[142] CC, art. 19 (2).

[143] RS 235.1.

[144] FF 1997 I 701. Switzerland ratified this instrument on 2 October 1997; it entered into force for Switzerland on 1 February 1998.

[145] Of 1 December 1999. RS 331.

[146] RS 211.222.338, Ordinance of 19 October 1977.

[147] RS 0.105.

[148] RS 0.106.

[149] ATF 108 Ib 408.

[150] CP, art. 111 et seq.

[151] CP, art. 122 et seq.

[152] CP, art. 127 et seq.

[153] CP, art. 180 et seq.

[154] Information on family guidance services and institutions, education of parents, etc. can be found in the commentary relating to article 18 of the Convention.

[155] CC, art. 303.

[156] CC, art. 302 (3).

[157] See the recent position of the Federal Council of 13 March 2000 on the Berberat motion, No. 99.3627, of 22 December 1999.

[158] General definition of the family proposed by a group of federal experts in 1982 in their report on family policy in Switzerland (final report submitted to the Chief, Federal Department of Home Affairs, by the "family report" Working Group), p. 7.

[159] See detailed statistical tables Nos. 3 and 4 annexed (Population under 18 years of age by type of household and region of domicile).

[160] CC, art. 301 (1).

[161] See commentary relating to article 27 of the Convention.

[162] CC, art. 297 (1).

[163] CC, art. 298 (a), (2).

[164] RS 857.5.

[165] Such as Geneva, Bern, Aargau, Zürich and Basel-Stadt.

[166] In the canton of Zürich, for example, the 1981 law on assistance to young people assigned to the secretariat for youth the task of counselling young children. Its work is to give assistance in individual cases, take preventive measures and foster independent aid and private initiative.

[167] Thus the St. Johann parent-child contact point in Basel is an institution of the Basler Frauenverein founded 20 years ago.

[168] For example the cantons of Basel-Land and Aargau.

[169] By way of example, in Basel there are at present nine centres and services of this type supported by the canton. In addition to counselling services for mothers and fathers, Basel has a contact centre for parents of infants, which offers both medical and psychosocial help. When the problems are more serious, parents are directed to the Basel family educational counselling

service. Mention should be made also of the therapeutic teaching service in Basel-Stadt. It should be noted that, in Basel, parent training forms part of adult training. It is a means of accompanying and supporting parents in raising their children and thus contributes to the healthy growth and development of children and parents in the family circle. It is aimed at prevention of dependency and violence and at the promotion of general health.

[170] See commentary relating to article 27 of the Convention.

[171] RS 832.10.

[172] RS 851.1.

[173] See commentary relating to article 22 of the Convention.

[174] See commentary relating to article 28 of the Convention.

[175] CC, art. 307.

[176] CC, arts. 310 and 311.

[177] See statistical table No. 5 annexed.

[178] See statistical table No. 5 annexed.

[179] CC, art. 314, ch. 1.

[180] CC, art. 297 (2). For cases involving divorce, see commentary relating to article 18 of the Convention.

[181] CC, arts. 176 and 156.

[182] CC, art. 314, first sentence.

[183] CC, art. 310 (2).

[184] CC, art. 133 (2). See commentary relating to article 12 of the Convention.

[185] CC, art. 146 (1).

[186] CC, art. 146 (2).

[187] CC, art. 146 (3).

[188] CC, art. 147 (2).

[189] CC, art. 147 (3).

[190] CC, art. 272.

[191] CC, art. 273 (2).

[192] CC, art. 275a (1).

[193] CC, art. 275a (3).

[194] FF 1999 1787.

[195] See information bulletin of the Central Organization for Family Questions, March 1998.

[196] Commission on Human Rights, forty-fifth session, 2 March 1989 (E/CN.4/1989/48, para. 203).

[197] ATF 124 II 361, third preambular paragraph.

[198] Concerning withdrawal of the reservation, see section 10 of the text under article 10.

[199] Switzerland is bound by article 12 of the International Covenant on Civil and Political Rights.

[200] Regulation of 1 March 1949 governing the Federal Act concerning the Permanent and Temporary Residence of Foreigners (LSEE/RS 142.201), article 2 (7).

[201] Federal Act concerning the Acquisition and Loss of Nationality, of 29 September 1952 (RS 141.0), article 1.

[202] See Federal Act concerning the Permanent and Temporary Residence of Foreigners, of 26 March 1931 (LSEE, RS 142.20), articles 7 and 17, (2) and the Ordinance Limiting the Number of Foreigners of 6 October 1986 (OLE/RS 823.21), article 38.

[203] The age limit is set at 20 years for children who are nationals of Spain, Italy and Portugal, the main manpower-exporting countries.

[204] ATF 118 Ib 153, preambular paragraph 1 (b).

[205] The one-year waiting period was completely eliminated in 1993.

[206] ATF 118 Ib 153. In that particular case family reunification was refused because the child had lived apart from the parent requesting it and wanted to come to Switzerland shortly before turning 18 basically for economic reasons. See also ATF 125 II 585.

[207] Unpublished ATF of 23 February 1996 in the case C.-P.-V, 2A.354/1995. See also ATF 125 II 585.

[208] ATF 118 Ib 153.

[209] LSEE, art. 5.

[210] LSEE, art. 6.

[211] LSEE, art. 17 (2).

[212] OLE, art. 38.

[213] OLE, art. 13 (f).

[214] OLE, art. 36.

[215] The child of a Spanish, Italian or Portuguese national, admitted for family reunification between the ages of 18 and 20, can obtain a permanent residence permit after a regular, uninterrupted stay of five years.

[216] ATF 115 Ib 97, third preambular paragraph.

[217] ATF 119 Ib 81.

[218] ATF 115 Ib 97, third preambular paragraph.

[219] ATF 122 II 1, second preambular paragraph; 120 Ib 1, preambular paragraph 3 (b).

[220] ATF 109 Ib 183.

[221] The Federal Court stated that article 8 of the European Convention applied in the case of a father who, as a result of divorce, had lost his right to reside in Switzerland, but whose son had Swiss nationality; the father could invoke an intact family relationship with his child, even though he had neither parental authority nor custody (ATF 120 Ib 1, preambular paragraph 1 (d).

[222] ATF 119 Ib 81, preambular paragraph 4 (a); 118 Ib 153, preambular paragraph 2 (d).

[223] ATF 122 II 289, preambular paragraph 3 (b).

[224] ATF 115 Ib 97; 118 Ib 153; 120 Ib 22.

[225] In the context of measures under the law relating to aliens, the Federal Court has ruled that family life merits protection in such cases only when there is a relationship of dependence between the family members. Such a situation may in particular arise from a need for assistance or care, for example in the case of physical or mental disability or severe illness, regardless of the age of the person concerned. (ATF 120 Ib 257, preambular paragraph 1 (e), 261; 115 Ib 1; and various unpublished decisions cited in: Martina Caroni, Privat- und Familienleben zwischen Menschenrecht und Migration, Diss. Bern, Berlin, 1999, p.185).

[226] ATF 119 Ib 91.

[227] Decision Gül v. Switzerland, 19 February 1996, vol. 1996-I, No. 3.

[228] OLE, art. 38.

[229] OLE, art. 39.

[230] According to article 13 of the 1964 Italian-Swiss emigration agreement, an Italian worker with a temporary residence permit has the right, on certain conditions, to bring his spouse and minor children into Switzerland (RS 0.142.114.548).

[231] OLE, arts. 38 and 39.

[232] ATF 118 Ib 153 and 125 II 585.

[233] LSEE, art. 17, para. 2; OLE, arts. 38 and 39.

[234] ATF 122 II 1; 120 Ib 1 and 125 II 633.

[235] ATF 115 Ib 1.

[236] ATF 109 Ib 183.

[237] ATF 120 Ib 257, preambular paragraph 1 (e); 115 Ib 1.

[238] ATF 122 II 385, preambular paragraph 1(c).

[239] ATF 122 II 289, preambular paragraph 3 (b).

[240] ATF 119 Ib 81, preambular paragraph 4 (a); 118 Ib 153, preambular paragraph 2 (d).

[241] ATF 122 II 385, preambular paragraph 4.

[242] LSEE, art. 4.

[243] ATF 122 II 1.

[244] ATF 119 Ib 91. The European Court ruled that there had been no violation of article 8 of the European Convention, in view of the fact that the foreigner wanting to bring members of his family (two children) into Switzerland on grounds of family reunification, held only a retractable temporary residence permit, which did not give him the right to family reunification under Swiss law, and that it was possible for the persons living in Switzerland to return to Turkey and pursue their family life there.

[245] ATF 119 Ib 91 and 125 II 585.

[246] ATF 122 II 289, third preambular paragraph; ATF 115 Ib 1.

[247] ATF 120 Ib 1. In this case a temporary residence permit was issued to enable a Tunisian national to live with his daughter, his natural child of Swiss nationality, whom he saw every week and to whom he paid a regular allowance.

[248] OLE, art. 36.

[249] OLE, art. 13 (f).

[250] RO 1999, 2262.

[251] Lasi, art. 27, para. 3.

[252] Asylum Appeals Commission decision of 20 February 1996 (JICRA 1996/14).

[253] Lasi, art. 44 (1).

[254] Lasi, art. 51 (3).

[255] Asylum Appeals Commission decision of 6 November 1995 (JICRA 1995/24).

[256] Ordinance on Temporary Admission of Foreigners of 25 November 1987 (RS 142.281), article 7.

[257] See sect. 3, supra.

[258] OLE, art. 38 (2).

[259] Regarding the reservation, see also the position taken by the Federal Council on 13 March 2000 on the Berberat motion, No. 99.3627, of 22 December 1999.

[260] The idea of following up return decisions was supported by several delegations, including the Swiss delegation, and approved at the third meeting of the Special Commission to review the operation of the Hague Convention on the Civil Aspects of International Child Abduction in March 1997.

[261] RS 0.211.230.01.

[262] RS 0.211.230.02. These instruments complete, from a specific angle, the Hague Convention concerning the Powers of Authorities and the Law Applicable in respect of the Protection of Infants of 5 October 1961 (RS 0.211.231.01), ratified earlier by Switzerland.

[263] Accession to the Convention is effective only in relations between the acceding State and Contracting States which have officially accepted that State's accession (art. 38).

[264] See comments relating to articles 18 and 27 of the Convention.

[265] CC, art. 308 (2), see statistical table No. 5 annexed.

[266] CC, art. 280 (1).

[267] CC, art. 285 (1).

[268] CC, art. 285 (2).

[269] CC, art. 289 (1).

[270] CC, art. 290.

[271] CC, arts. 291 and 292.

[272] CC, art. 293 (2).

[273] RS 0.211.221.431.

[274] RS 0.211.221.432.

[275] RS 0.211.213.01.

[276] RS 0.211.213.02.

[277] RS 0.274.15.

[278] CC, art. 310 (1).

[279] CC, art. 310 (1).

[280] CC, art. 301 (2).

[281] See commentary relating to article 21.

[282] Of 19 October 1977; RS 211.222.338.

[283] OPE, art. 4.

[284] OPE, art. 5.

[285] OPE, arts. 10 and 11.

[286] OPE, art. 13.

[287] OPE, art. 15.

[288] OPE, art. 19 (1).

[289] OPE, art. 20.

[290] ATF 121 III 307.

[291] CC, art. 314a (1).

[292] CC, art. 314a (2) and 397d.

[293] CC, art. 264.

[294] OPE, art. 5.

[295] CC, art. 265 (2).

[296] CC, art. 265 (3).

[297] CC, art. 265a.

[298] CC, art. 265b (1) and (2).

[299] CC, art. 265c.

[300] CC, art. 268a (3).

[301] CC, art. 265 (1).

[302] CC, art. 264a (1).

[303] CC, art. 264a (2).

[304] CC, art. 264a (3).

[305] CC, art. 268.

[306] CC, art. 268a.

[307] CC, art. 269c; Ordinance on Intermediary Activity with a view to Adoption, RS 211.221.36.

[308] Federal Council circular of 21 December 1988 to the supervisory authorities concerning the placement of children and intermediary activity for eventual adoption. FF 1989 I 8, in ch. 114.1.

[309] LDIP, art. 77 (2).

[310] Entered into effect 1 January 1989.

[311] See LDIP, arts. 75 (1) and 77; CC, arts. 264-269.

[312] In this connection, see A. Bucher, Droit international privé suisse, t. II, Personnes, famille, successions, p. 251, Nos. 755 and 756.

[313] As amended on 21 December 1988 (RS 211.222.338).

[314] Federal Act of 18 December 1987 on International Private Law (LDIP), RS 291, art. 78.

[315] See OPE, art. 6; C. Hegnauer, Droit suisse de la filiation et de la famille, French adaptation by B. Schneider, Berne 1990, 3rd ed., p. 80, No. 11.07.

[316] OPE, art. 6 (2).

[317] OPE, art. 6 (4).

[318] OPE, arts. 6 and 6a.

[319] OPE, art. 8b.

[320] LDIP, art. 78 (1).

[321] See commentary relating to article 23 (b).

[322] RS 831.20.

[323] RS 832.10.

[324] Ordinance Limiting the Number of Foreigners of 6 October 1986 (OLE), RS 823.21, article 35.

[325] An authorization granted under the terms of OLE, article 35.

[326] RS 142.20.

[327] Ordinance on Intermediary Activity with a view to Adoption of 28 March 1973, RS 211.221.36, article 13 (2).

[328] RS 0.211.221.310.

[329] RS 0.211.221.315.

[330] The Federal Council, by decision of 19 May 1999, has transmitted notification of the ratification of the Convention to Parliament (FF 1999 5129).

[331] CC, art. 310 (1).

[332] OPE, arts. 10 and 19 (1). For more details, see the commentary relating to article 20 of the Convention below.

[333] CC, art. 397a (3).

[334] CC, art. 397d.

[335] CC, art. 314a (2).

[336] See below.

[337] CP, art. 111 et seq. (homicide); art. 122 et seq. (especially art. 123 (2): simple bodily injuries against a child, of whom the perpetrator of the offence had custody or for whom he or she had a duty of care).

[338] RS 812.121.

[339] See commentary relating to article 34 of the Convention.

[340] CP, art. 187.

[341] Version of 1 October 1992.

[342] CP, art. 358 bis and 358 ter; see FF 1985 II 1021.

[343] CP, art. 358 bis.

[344] CP, arts. 320-321 bis.

[345] FF 1985 II 1021, 1077S.

[346] CC, art. 307 (1).

[347] CC, art. 307 (2).

[348] See statistical table No. 5 annexed.

[349] CC, art. 420.

[350] St. Gallen, Bellinzona, Lausanne and Bern.

[351] An interesting project was launched in 1997 by the Swiss Association for the Protection of Children, intended for sports club trainers dealing with children. There is also a project for the prevention of sexual abuse against children and young people in youth and sports associations (CSAJ and CEVI).

[352] See commentary relating to articles 34 and 35.

[353] The parliamentary moves concerned are the Vermot motion 97.3610 "Maltreated children and public relations", of 17 December 1997, and postulate 96.3180 of 24 April 1996 by the National Council's Legal Affairs Commission, calling for the implementation of an information campaign against daily violence in the immediate social environment.

[354] Funded chiefly by the Central Organization for Family Questions, an ongoing training course in several modules is provided in German-speaking Switzerland for specialists dealing with child maltreatment and sexual abuse (such as lawyers, police officers, doctors and nurses, tutorship authorities, social workers, psychologists and teachers).

[355] In particular by the Swiss Federation for Parents' Schools.

[356] The cantons of Vaud and Ticino, and the towns of Lucerne and Lausanne.

[357] These are multidisciplinary hospital bodies in charge of detecting and dealing with cases of maltreatment and measures for protecting children (e.g. cantons of Vaud and Geneva).

[358] Canton of Zürich.

[359] Cantons of Fribourg, Vaud, Jura and Graubünden.

[360] For instance, the film "Dis NON" (Say NO).

[361] Act of 4 October 1991, effective 1 January 1993. RS 312.5.

[362] Of 18 November 1992. RS 312.51.

[363] See in particular parliamentary initiative No. 94.441: Sexual exploitation of children. Better protection (Goll).

[364] RS 832.10.

[365] RS 0.312.5.

[366] Article 3 of the Federal Act concerning Assistance to Victims of Offences of 4 October 1991 (LAVI, RS 312.5).

[367] Daniel S. Halpérin, Paul Bouvier, Hélène Rey Wicki, A contre-coeur, à contre-corps. Regards pluriels sur les abus sexuels d'enfants. Geneva, 1997.

[368] Josef Martin Niederberger, Sexueller Missbrauch von Mädchen in der Schweiz - Verbreitung, Täterstrategie, Folgen, Köniz 1998.

[369] See commentary relating to Convention, article 2.

[370] See FC, art. 35 (2).

[371] Horizontal effect, see FC, art. 35 (3).

[372] The time limit for the consultation procedure vis-à-vis the cantons, the federal courts, concerned federal commissions, political parties and interested organizations expired on 31 August 2000.

[373] See commentary relating to Convention, article 28, below.

[374] Federal Act concerning Disability Insurance (LAI), of 19 June 1959 (RS 831.20).

[375] Geneva, Schwyz, Bern, Aargau and Valais which, in 1991, set up a specialized office for the integration of disabled persons.

[376] Zug has, moreover, formulated a policy on disabled persons, while Schaffhausen has produced a design for special schools.

[377] See commentaries relating to Convention, articles 6 and 27.

[378] RS 832.10.

[379] LAMal, art. 19.

[380] Physical activity and sport, whose importance for the health and development of children and young people is becoming increasingly clear, both within and outside gymnastics classes, are thus included in a project. In addition, with the support of this Foundation, the Swiss Association for Physical Education in Schools is currently preparing a project aimed at developing and promoting health in schools, which is based on physical activity.

[381] See in this connection ATF 118 Ia 427.

[382] The programmes which schools have undertaken very widely: school policy encouraging health promotion, school environment, intercultural tolerance, development in teams, pupil participation, prevention of violence, specific in-school training, organizations of school breaks, arrangement of recreation sites, healthy diet, spatial arrangement. WHO's Ottawa Charter for Health Promotion on 21 November 1996 constitutes the conceptual framework for these efforts.

[383] Source: 1997 statistics on members of the Swiss Medical Association (FMH).

[384] Schweizerischer Verband Kind und Spital.

[385] See in this connection "Mortality and infant mortality in Switzerland 1986-1992", OFS, Bern, 1998.

[386] "Des données pour agir" (Data for action), report on women's health in Switzerland, FNRS, Bern, 1996.

[387] In the canton of Geneva, a member of the youth health service visits all fourth and sixth-year primary classes (three hours a year for each class), second-year junior secondary classes (four hours a year) and second-year senior secondary classes (two hours a year). This service comprises 20 women and 4 men who have been trained in medicine, care for the sick, psychology and education. In the canton of Neuchâtel, the school doctor or some other specialist deals with sex education questions in fifth, seventh and ninth-year classes. The canton of Vaud has given the Pro Familia association responsibility for sex education in all schools in the canton. In Valais, the seven family planning services deal with the subjects of health education and sex education for first-year secondary classes.

[388] These services may also function at the supra-cantonal level, for example the joint services for Lucerne, Obwalden and Nidwalden. These services are also decentralized in certain cantons; Ticino has 4 pregnancy advisory services on, Zürich 10, Solothhurn 4, St. Gallen 2, Valais 7, etc.

[389] In Basel-Stadt and in Geneva, simple gynaecological consultations are available to young women free of charge or at reduced prices.

[390] "Des données pour agir", report on womens' health in Switzerland, FNRS, Bern, 1996, pp. 34 et seq.

[391] Young people "close to risk" may be defined as young people with risk behaviour, young people in an environment with a high prevalence of HIV and who expose themselves to risks, young people who lead a marginal, unstructured life, and young people who are socially disadvantaged.

[392] For example, Zug, Zürich, Valais and Vaud.

[393] AIDS & KIND, Schweiz. Stiftung für Direkthilfe an betroffene Kinder, Seefeldstrasse 219, 8008 Zürich.

[394] Experience shows that better results are achieved through activities undertaken by local actors.

[395] The "Agenda 21" adopted at the Rio Summit contains a chapter on the protection and promotion of health. The United Nations gave WHO responsibility for the attainment of these objectives. The States members of WHO's European region were invited to prepare their own national plans of action by 1997.

[396] See commentary relating to Convention, article 24, above.

[397] See commentary relating to Convention, article 23, above.

[398] FF 1999 3220 et seq. See in this connection "Der Neue Finanzausgleich zwischen Bund und Kantonen. Schlussbericht der vom Eidg. Finanzdepartement und der Konferenz der Kantonsregierungen gemeinsam getragenen Projektorganisation", Bern/Solothurn, 31 March 1999.

[399] RS 211.222.338.

[400] CC, art. 302 (1).

[401] CC, art. 277, and ATF 117 II 372.

[402] See commentary relating to Convention, article 6.

[403] See also commentary relating to Convention, article 26.

[404] FC, art. 62 (2).

[405] The possibility for children of any denomination to attend public school is covered by the general guarantee of freedom of belief and religion under article 15 of the Constitution.

[406] ATF 3 706; JAAC 1948-50 (19/20), No. 67; ATF 107 1a 261 et seq.; JAAC 1983 (47), No. 32.

[407] FC, arts. 62-63.

[408] Contracts Code, art. 344 et seq.

[409] RS 416.0.

[410] In particular, the Federal Sports College at Macolin. RS 415.0 and RS 415.1.

[411] RS 411.9.

[412] The canton of Ticino has not signed for two reasons: the school year is less than 38 weeks long and the age for starting compulsory education is under six.

[413] Grob, Alexander (ed.), Kinder und Jugendliche heute: belastet - überbelastet? Beschreibung des Alltags von Schülerinnen und Schülern in der Schweiz und in Norwegen, Coire/Zürich 1997.

[414] FC, art. 63 (1).

[415] RS 412.10.

[416] On the subject of women and vocational training, see articles in Frauenfragen 2/1998; Report concerning postulate presented by Ruth Grossenbacher, "Formation et perfectionnement professionnels des femmes", Federal Office for Vocational Training and Technology (OFFT) (ed.), Bern 1998.

[417] RS 412.10.

[418] As of the last census, in 1990, the official languages were distributed as follows in the resident population as a whole: German, 63.6 per cent; French, 19.2 per cent; Italian, 7.6 per cent; and Romansh, 0.6 per cent. There are four traditionally recognized linguistic regions. Each canton determines its own official language or languages. Three cantons are bilingual and Graubünden is trilingual. In Graubünden, the communes have full autonomy to determine their official languages.

[419] ATF 100 Ia 465.

[420] See commentary relating to Convention, articles 18, 22 and 30.

[421] Recommendations adopted by the CDIP on 24 October 1991.

[422] Response by the Federal Council, dated 31 May 1999, to a parliamentary question from National Councillor Cécile Bühlmann (98.3656): separate classes for Swiss and foreign school students.

[423] FC, art. 8.

[424] Federal Commission against Racism, "Des classes séparées?", August 1999.

[425] This is the case in Schaffhausen, Appenzell-Innerrhoden, St. Gallen, Glarus, Bern, Jura and Basel-Stadt.

[426] See commentary relating to Convention, article 23.

[427] See, for example, Gérard Bless, "Special Education in Switzerland", in Cecil R. Reynolds and Elaine Fletcher-Jantzen (eds.), Encyclopaedia of Special Education, second edition, New York 1999.

[428] The canton of Uri was the first canton in central Switzerland to enshrine in law the principle of support for gifted children. The new education act of the canton of Lucerne also states that gifted children have the same right to support as weaker students. Other cantons make provision for express streams or at the very least have special guidelines for motivating gifted children within the normal school framework.

[429] Survey carried out for the forty-second session of the International Conference on Education, on the eradication or drastic reduction of illiteracy, reply by Switzerland, secretariat of the Swiss Conference of Cantonal Directors of Education (CDIP), Bern.

[430] Literacy, Economy and Society, Results of the First International Adult Literacy Survey, OECD, 1995.

[431] "Recommandations concernant l'encouragement de l'échange en Suisse et à l'étranger dans le domaine de l'éducation et de la formation (élèves, apprenti(e)s et enseignant(e)s)", 18 February 1993.

[432] See, for example, the Compulsory Education Act of the canton of Berne, article 2, 19 March 1992.

[433] RS 413.11.

[434] As in Appenzell-Innerrhoden, Basel-Stadt and Obwalden, for example.

[435] RS 446.1.

[436] The most important results of this study are reported in Hüttenmoser, Marco; Degen-Zimmermann, Dorothee, Lebensräume für Kinder. Empirische Untersuchungen zur Bedeutung des Wohnumfeldes für den Alltag und die Entwicklung der Kinder. Bericht Nr. 70, NFP Stadt und Verkehr. Edition Soziothek. Köniz 1995. The results of a control survey carried out in a rural area are reported in Hüttenmoser, Marco, Kein schöner Land. In "und Kinder", No. 54, pp. 21-50.

[437] Regula Begert and Matthias Steinmann, "Kinder und Medien in der Schweiz - eine Studie des SRG Forschungsdienstes", Bern 1997.

[438] Seventy-eight per cent of children said they preferred to play outdoors.

[439] Established in December 1982.

[440] RS 142.30.

[441] RS 142.301.

[442] RS 291.

[443] RS 0.211.231.01.

[444] RO 1999, 2262.

[445] RS 142.311.

[446] RS 822.11.

[447] RO 1999 2302.

[448] In September 1999, the ODR drew up a new directive concerning the handling of RMNA requests for asylum (Asylum Directive 23.2, of 20 September 1999). This Directive, which entered into force on 1 October 1999, is intended to inform the federal and cantonal authorities about certain procedural aspects concerning RMNAs as well as their specific functions in this connection.

[449] RS 142.20.

[450] RS 0.518.12; 0.518.23; 0.518.42; 0.518.21.

[451] RS 0.518.521; 0.518.522.

[452] Adopted at Rome in June 1998.

[453] RS 0.518.522.

[454] RS 510.10.

[455] RS 511.11.

[456] Young persons in educational work establishments, which receive delinquents from 17 to 25 years of age, are in daily contact with young adults - a "procedure" that may be regarded as being of benefit to the child.

[457] FF 1999 1787 et seq.

[458] See commentary relating to the Convention, article 1.

[459] As is the case at the present time, it will be achieved essentially through measures set out in the Civil Code for the protection of the child. Reference will therefore also be made to protection measures.

[460] Criminal judgements of minors in 1997, Actualités OFS, Neuchâtel 1999.

[461] RS 741.10.

[462] RS 812.121.

[463] See also ATF 121 I 208.

[464] See also the case law of the European Court of Human Rights.

[465] ATF 107 Ia 256.

[466] ATF 107 Ia 256; 116 Ia 147.

[467] ATF 119 Ia 508.

[468] FF 1997 I pp. 1 et seq., p. 189.

[469] FF 199 2083 and the Federal Council's reply to the Berberat motion.

[470] FF 1999 2219.

[471] FF 1999 2083 et seq.

[472] See also in this connection the position adopted by the Federal Council on 13 March 2000 concerning the Berberat motion, No. 99.3637, of 22 December 1999.

[473] ATF 121 I 208, preambular paragraph 4 (b).

[474] See the Netherlands, judgement of 24 August 1993, Series A No. 267, para. 38.

[475] RS 173. 110.

[476] See FF 1999 3667 and the stand taken by the Federal Council on 13 March 2000 concerning the Berberat motion, No. 99.3627, of 22 December 1999.

[477] Of 13 March 1964, RS 822.11.

[478] Of 8 October 1971, RS 822.21.

[479] Of 20 March 1981, RS 832.20.

[480] Of 23 September 1953, RS 747.30 and RS 747.301.

[481] RS 822.31.

[482] Of 19 April 1978, RS 412.10.

[483] RS 915.1.

[484] Of 19 March 1976, RS 819.1.

[485] RS 823.21.

[486] RS 210.

[487] RS 220.

[488] RS 311.0.

[489] FF 1999 567.

[490] FF 2000 292.

[491] RS 0.103.1.

[492] See observations below on limited possibilities of supervision due to privileges and immunities.

[493] RS 0.191.01.

[494] RS 0.101.02.

[495] "Alcohol, tobacco and illegal drugs in Switzerland (1994-1996)", ISPA with the support of the OFSP, Bern, 1997.

[496] RS 812.121.

[497] See commentary relating to Convention, article 24.

[498] For example, Zug, Thurgau, Vaud, Neuchâtel and Fribourg.

[499] RS 0.812.121.0.

[500] RS 0.812.121.01.

[501] RS 0.812.121.02.

[502] See the Federal Act concerning Action to Combat Money Laundering in the Financial Sector of 10 October 1997, CP, article 260, relating to criminal organizations and CP, article 305 bis, relating to money laundering.

[503] Message concerning federal laws on the surveillance of postal correspondence and telecommunications, and on secret investigation, FF 1998 IV 3689.

[504] "Alcohol, tobacco and illegal drugs in Switzerland (1994-1996)", ISPA with the support of OFSP, Bern, 1997.

[505] See B.J. Jacquat and Y. François, "Konsum psychoaktiver Substanzen bie Schülern in der Schweiz", SFA, 1999.

[506] An amendment of the Federal Act concerning Alcohol (Lalc) of 21 June 1932 entered into force on 1 July 1999.

[507] Federal Act concerning Radio and Television (LRTV), article 18, of 21 June 1991 (RS 784 40) and Lalc, article 42 (b), of 21 June 1932 (RS 680).

[508] RS 817.02.

[509] See Lalc, articles 39 et seq.

[510] Some cantons have set age limits only in the legislation on hotels and bars, while others have also introduced regulations on this subject in relation to retail trade.

[511] Federal Act concerning Radio and Television (LRTV), article 18, of 21 June 1991 (RS 784.40).

[512] See commentary relating to Convention, article 19.

[513] Council of Europe, Committee of Ministers, Recommendation No. R (89) 9.

[514] Council of Europe, Committee of Ministers, Recommendation No. R (95) 13.

[515] See below, for the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, commentary relating to Convention, article 35.

[516] See commentary relating to Convention, article 33.

[517] See commentary relating to Convention, article 27.

[518] See commentary to Convention, articles 19, 26 and 27.

[519] See the United Nations protocols of 12 November 1947, with regard to international conventions ratified by Switzerland on:

Suppression of the white slave traffic (18 May 1904; without obligation to enact criminal provisions; RS 0.311.31);

Suppression of the white slave traffic (4 May 1910; RS 0.311.32);

Suppression of the traffic in women and children (30 September 1921; an additional League of Nations convention which expands the suppression of the traffic in children of both sexes and sets the age limit at 21 years; RS 0.311.33);

Suppression of the traffic in women of full age (11 October 1933; RS 0.311.34).

The United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (21 March 1950), which replaces the above-mentioned conventions, has not been ratified.

The Federal Act of 30 September 1925 on the Suppression of the Traffic in Women and Children was enacted with a view to ratifying the conventions of 1910 and 1921 (see CP, art. 398 (2) (m)).

[520] See also statistical table 2 in the annex (with detailed figures on other languages and religions).

[521] See statistical table 1 in the annex.

[522] The adoption, on 10 March 1996, of former article 116 of the Constitution allowed Romansh to become a national and official language of Switzerland - alongside German, French and Italian - in the relations of the administration and the judicial authorities with Romansh citizens. Thus, the Constitution and a special selection of laws and international treaties are now published in Romansh. A first decree in Romansh was issued by the Federal Court in June 1996.

[523] FC, art. 70.

[524] Ibid.

[525] FF 1997 II 301-334.

[526] RS 441.3. FF 1995 II 1185-1204.

[527] G. Malinverni, "La liberté de la langue", in Commentaire de la Constitution fédérale de la Suisse, I, Basel, p. 9.

[528] ATF 122 I 236.

[529] See W.Leimgruber, Th. Meier, R. Sablonier, "Das Hilfswerk für die Kinder der Landstrasse", a historical study based on the files of the Pro Juventute Foundation in the Federal Archives, Bern, 1998. On the travellers minority, see also article 30.

[530] W. Leimgruber, Th. Meier, R. Sablonier, op. cit.

[531] See commentary relating to Convention, articles 18 and 28.

[532] It was attended by the main groups concerned: representatives of the diplomatic community, of schools, of the scientific and economic communities as well as of immigrant associations and foreign parents. Its work confirmed the importance of such courses as much for the society and economy of the host country as for the unity of the migrant families and the development of the children.

[533] Geneva (classes in 9 languages), Lucerne, Schwyz, Basel-Stadt and Zürich incorporate such teaching either wholly or partially into the compulsory schooling of foreign children. Graubünden had a pilot project from 1996 to 2000 at Samedan whereby all foreign children, from kindergarten to fourth grade, received first-language support at a rate of one lesson a week.

List of annexes*

A. Elements of a Swiss policy on children and young people, Federal Department of Home Affairs, Bern, 3 July 2000

B. Legal texts (available on Internet: www.admin.ch/ch/f/rs/rs.html)

1. Federal Constitution of the Swiss Confederation of 18 April 1999 (FC) (RS 101)

2. Federal Act concerning the Acquisition and Loss of Nationality (Nationality Act, LN) of 29 September 1952 (RS 141.0)

3. Asylum Act (Lasi) of 26 June 1998 (RS 142.31), and Ordinances 1 and 2 of 11 August 1999 (RS 142.311 and RS 142.312)

4. Federal Act concerning the Permanent and Temporary Residence of Foreigners (LSEE) of 26 March 1931 (RS 142.20)

5. Federal Act concerning Equality between Women and Men (Equality Act, LEg) of 24 March 1995 (RS 151)

6. Swiss Civil Code (CC) of 10 December 1907 (RS 210)

7. Ordinance on Civil Status (OEC) of 1 June 1953 (RS 211.112.1)

8. Ordinance on Intermediary Activity with a view to Adoption of 28 March 1973 (RS 211.221.36)

9. Ordinance regulating the Placement of Children of 19 October 1977 (RS 211.222.338)

10. Federal Act concerning Data Protection (LPD) of 19 June 1992 (RS 235.1)

11. Federal Act concerning Private International Law (LDIP) of 18 December 1987 (RS 291)

12. Swiss Criminal Code (CP) of 21 December 1937 (RS 311.0)

13. Message concerning the amendment of the Swiss Criminal Code (general provisions, entry into force and enforcement of the Criminal Code) and the Military Criminal Code, and also a federal act governing the criminal status of minors, of 21 September 1998 (FF 1999, 1787 et seq.)

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* Available from the Committee secretariat.

14. Federal Act concerning Assistance to Victims of Offences (LAVI) of 4 October 1991 (RS 312.5)

15. Ordinance on Computerized Criminal Records of 1 December 1999 (RS 331)

16. Federal Act concerning Vocational Training (LFPr) of 19 April 1978 (RS 412.10)

17. Ordinance on the Recognition of Maturité Certificates (ORM) of 15 February 1995 (RS 413.11)

18. Federal Act concerning the Encouragement of Extra-curricular Youth Activities (Youth Activities Act, LAJ) of 6 October 1989 (RS 446.1) and Ordinance (RS 446.11)

19. Federal Act concerning the Army and Military Administration (LAAM) of 3 February 1995 (RS 510.10), and Ordinance on the Recruitment of Conscripts (OREC) of 17 August 1994 (RS 511.11)

20. Federal Act concerning Alcohol (Lalc) of 21 June 1932 (RS 680)

21. Federal Act concerning Radio and Television (LRTV) of 21 June 1991 (RS 784.40), and Ordinance (RS 784.401)

22. Federal Act concerning Narcotic Drugs and Psychotropic Substances (Narcotic Drugs Act, LStup) of 3 October 1951 (RS 812.121)

23. Federal Act concerning Work in Industry, Crafts and Commerce (Work Act) of 13 March 1964 (RS 822.11)

24. Ordinance limiting the Number of Foreigners (OLE) of 6 October 1986 (RS 823.21)

25. Federal Act concerning Old-Age and Survivors Insurance (LAVS) of 20 December 1946 (RS 831.10)

26. Federal Act concerning Sickness Insurance (LAMal) of 18 March 1994 (RS 832.10)

27. Federal Act concerning Disability Insurance (LAI) of 19 June 1959 (RS 831.20)

C. Statistics

1. Resident population under the age of 18, by nationality, by sex and by place of residence

2. Resident population under the age of 18, by main language, religious affiliation and place of residence

3. Resident population under the age of 18 by type of household and place of residence

4. Population by type of household and place of residence

5. Swiss statistics published by the tutorship authorities for 1997 concerning old and new measures for the protection of children

D. List of principal abbreviations

ATF	Arrêt du Tribunal Fédéral (Decision of the Federal Court)
CC	Swiss Civil Code of 10 December 1907
CDIP	Conference of Cantonal Directors of Education
CFR	Federal Commission against Racism
CP	Swiss Criminal Code of 21 December 1937
CRA	Asylum Appeals Commission
DFI	Federal Department of Home Affairs
ECHR	European Convention on Human Rights
FC	Federal Constitution of the Swiss Confederation of 18 April 1999
FF	Feuille fédérale
LAI	Federal Act concerning Disability Insurance of 19 June 1959
LAJ	Federal Act concerning the Encouragement of Extra-curricular Youth Activities of 6 October 1989
LAMal	Federal Act concerning Sickness Insurance of 18 March 1994
Lasi	Federal Act concerning Asylum of 26 June 1998
LAVI	Federal Act concerning Assistance to Victims of Offences of 4 October 1991
LAVS	Federal Act concerning Old-Age and Survivors Insurance of 20 December 1946
LDIP	Federal Act concerning International Private Law of 18 December 1987
LEg	Federal Act concerning Equality between Women and Men (Equality Act) of 24 March 1995
LFPr	Federal Act concerning Vocational Training of 19 April 1978

LN	Federal Act concerning the Acquisition and Loss of Nationality (Nationality Act) of 29 September 1952
LPD	Federal Act concerning Data Protection of 19 June 1992
LRTV	Federal Act concerning Radio and Television of 21 June 1991
LSEE	Federal Act concerning the Permanent and Temporary Residence of Foreigners of 26 March 1931
LStup	Federal Act concerning Narcotic Drugs and Psychotropic Substances of 3 October 1951
LT	Federal Act concerning Work in Industry, Crafts and Commerce (Work Act) of 13 March 1964
NGO	Non-governmental organization
ODR	Federal Office for Refugees
OEC	Ordinance on Civil Status of 1 June 1953
OFSP	Federal Office of Public Health
OLE	Ordinance Limiting the Number of Foreigners of 6 October 1986
ORM	Ordinance on the Recognition of Maturité Certificates of 15 February 1995
RMNA	Unaccompanied Juvenile Asylum-Seeker
RO	Recueil officiel des lois fédérales (Official compendium of federal statutes)
RS	Recueil systématique du droit fédéral (Systematic compendium of federal law)